

Also, petition of the Philadelphia Board of Trade, against repeal of bankruptcy law—to the Committee on the Judiciary.

By Mr. FLACK: Papers to accompany bills for relief of Ezra M. Rickert and Henry H. Davis—to the Committee on Invalid Pensions.

By Mr. FULLER: Petition of the One hundred and thirteenth Illinois Veteran Volunteer Infantry Association, for an increase of rates of pension in certain cases—to the Committee on Invalid Pensions.

By Mr. GAINES of Tennessee: Paper to accompany bill for relief of F. M. Yarbrough—to the Committee on War Claims.

By Mr. GRAHAM: Petition of the Merchant Marine League, for the shipping bill—to the Committee on the Merchant Marine and Fisheries.

Also, petition of the executive committee of the Interchurch Conference on Federation, against abuses in the Kongo Free State—to the Committee on Foreign Affairs.

Also, petition of the American Musical Copyright League, against a copyright law preventing mechanical reproduction of music—to the Committee on Patents.

By Mr. GROSVENOR: Petition of the Philadelphia Board of Trade, for the shipping bill—to the Committee on the Merchant Marine and Fisheries.

By Mr. HARDWICK: Paper to accompany bill for relief of Jerome B. Clark—to the Committee on Invalid Pensions.

By Mr. KNAPP: Paper to accompany bill for relief of Martin Heiler—to the Committee on Pensions.

Also, papers to accompany bills for relief of Isaac Cain, Robert Lawrence, and William Wayman—to the Committee on Invalid Pensions.

By Mr. KNOFF: Paper to accompany bill for relief of Catherine Ludwig—to the Committee on Invalid Pensions.

By Mr. LAMB: Petition of Grove Council, No. 40, Junior Order United American Mechanics, favoring restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. LINDSAY: Petition of Posts Nos. 206 and 435, Grand Army of the Republic, Department of New York, for restoration of the canteen in State Home at Bath, N. Y.—to the Committee on Military Affairs.

Also, petition of the Philadelphia Board of Trade, for the shipping bill—to the Committee on the Merchant Marine and Fisheries.

Also, petition of the Philadelphia Board of Trade, against repeal of the bankruptcy law—to the Committee on the Judiciary.

By Mr. LEE: Paper to accompany bill for relief of heirs of Elijah Lumpkin—to the Committee on War Claims.

By Mr. LLOYD: Petition of citizens of Excelsior, Mo., against a parcels-post law—to the Committee on the Post-Office and Post-Roads.

By Mr. MANN: Petition of Harriet Laura Cady et al., favoring free postage on books for the blind—to the Committee on the Post-Office and Post-Roads.

By Mr. McMORRAN: Papers to accompany bills for relief of John R. Goodier, James W. Kasson, and Walter M. Rupert—to the Committee on Invalid Pensions.

By Mr. MOON of Tennessee: Paper to accompany bill for relief of John H. Allison—to the Committee on Invalid Pensions.

By Mr. PARKER: Paper to accompany bill for relief of Wilson Smith—to the Committee on Military Affairs.

By Mr. PEARRE: Petition of Jefferson Council, No. 127, and Saulte Mountain Council, No. 8, Junior Order United American Mechanics, for restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. RICHARDSON of Alabama: Paper to accompany bill for relief of W. M. Hall—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of Martha J. Sibley—to the Committee on War Claims.

Also, papers to accompany bills for relief of heirs of William D. Toone and William D. Bostick—to the Committee on War Claims.

By Mr. SHERMAN: Papers to accompany bills for relief of George O. Tibbitts and Thomas E. Hart—to the Committee on Invalid Pensions.

By Mr. SMITH of Kentucky: Papers to accompany bills for relief of Clarica Underwood and Catherine E. Moore—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of estate of R. D. Murray—to the Committee on War Claims.

Also, paper to accompany bill for an appropriation for the benefit of a national cemetery near the city of Lebanon, Ky.—to the Committee on Military Affairs.

Also, paper to accompany bill for relief of Mark Smock—to the Committee on Invalid Pensions.

By Mr. SPERRY: Petition of colored citizens of New Haven, Conn., assembled in a union thanksgiving service, protesting against the discharge of Companies B, C, and D of the Twenty-fifth United States Infantry—to the Committee on Military Affairs.

By Mr. SULZER: Petition of the Philadelphia Board of Trade, against repeal of the bankruptcy law—to the Committee on the Judiciary.

By Mr. THOMAS of North Carolina: Paper to accompany bill for relief of estate of Thomas S. Howard—to the Committee on War Claims.

By Mr. UNDERWOOD: Paper to accompany bill for relief of Levi Adcock—to the Committee on War Claims.

By Mr. VAN WINKLE: Petition of 150 citizens of New York, against liquor selling in any Government building, ship, or park—to the Committee on Alcoholic Liquor Traffic.

SENATE.

THURSDAY, December 6, 1906.

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings.

Mr. HALE. Mr. President, almost all the long record is one of bills introduced, and therefore I ask that the further reading of the Journal be dispensed with.

There being no objection, the further reading of the Journal was dispensed with.

The VICE-PRESIDENT. The Journal stands approved.

ANNUAL REPORT OF COMPTROLLER OF CURRENCY.

The VICE-PRESIDENT laid before the Senate the Annual Report of the Comptroller of the Currency for the year ended October 31, 1906; which was referred to the Committee on Finance, and ordered to be printed.

LIBRARY OF CONGRESS.

The VICE-PRESIDENT. The Chair lays before the Senate a communication from the Librarian of Congress, transmitting the annual report of the Librarian of Congress, together with the annual report of the superintendent of the Library building and grounds for the fiscal year ended June 30, 1906. The communication will be printed. The reports accompanying the communication will not be printed, but will be referred to the Committee on the Library in connection therewith.

MARITIME CANAL COMPANY OF NICARAGUA.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting, pursuant to law, the report of the Maritime Canal Company of Nicaragua; which, with the accompanying paper, was referred to the Committee on Inter-oceanic Canals, and ordered to be printed.

FOREST RESERVE LANDS.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting, in further response to the resolution of March 19, 1906, additional lists of persons, firms, and corporations who conveyed or relinquished to the United States lands within forest reserves, etc.; which, with the accompanying papers, was referred to the Committee on Public Lands, and ordered to be printed.

RESULT OF ELECTION IN ARIZONA.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting a certificate of the governor and the secretary of the Territory of Arizona, showing the result of the election held in that Territory on November 6, 1906, upon the question of joint statehood with New Mexico; which, with the accompanying papers, was referred to the Committee on Territories, and ordered to be printed.

RESULT OF ELECTION IN NEW MEXICO.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting a certificate of the governor and the secretary of New Mexico, showing the result of the election held in that Territory on November 6, 1906, upon the question of joint statehood with Arizona; which, with the accompanying papers, was referred to the Committee on Territories, and ordered to be printed.

MOQUI INDIAN LANDS.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, inclosing a letter from the Commissioner of Indian Affairs, with respect to the condition of the Moqui Indians of Arizona, together with the draft of a bill authorizing the allotment of lands to these Indians indi-

vidually; which, with the accompanying papers, was referred to the Committee on Public Lands, and ordered to be printed.

JICARILLA INDIAN RESERVATION LANDS.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, inclosing a letter from the Commissioner of Indian Affairs, together with the draft of a bill to quiet title to lands on the Jicarilla Reservation and to authorize the Secretary of the Interior to cause allotments to be made, and to dispose of the merchantable timber, and for other purposes; which, with the accompanying papers, was referred to the Committee on Public Lands, and ordered to be printed.

ACCOUNTS OF INDIAN AGENTS.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting a letter from the Commissioner of Indian Affairs, submitting an amendment to repeal so much of section 10 of the act of March 3, 1875, as requires transcripts of the cash books to be forwarded quarterly by each Indian agent to the Commissioner of Indian Affairs; which, with the accompanying paper, was referred to the Committee on Indian Affairs, and ordered to be printed.

DEVILS LAKE INDIAN RESERVATION.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, inclosing a copy of a letter from the Commissioner of Indian Affairs, recommending an amendment to article 3 of the act of April 27, 1904, authorizing the annual per capita payments to the Indians of the Devils Lake Reservation, in North Dakota, yet due, to be made in the month of April or May instead of in June; which, with the accompanying paper, was referred to the Committee on Indian Affairs, and ordered to be printed.

OSAGE INDIANS IN OKLAHOMA.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting a letter from the Commissioner of Indian Affairs, together with the draft of a bill recommending that the sum of \$69,120, the amount due the Osage tribe of Indians in Oklahoma, be placed to their credit, at interest, on the books of the Treasury; which, with the accompanying paper, was referred to the Committee on Indian Affairs, and ordered to be printed.

COMMERCIAL ORGANIZATIONS AND AGRICULTURAL ASSOCIATIONS.

The VICE-PRESIDENT laid before the Senate a communication from the Interstate Commerce Commission, transmitting, in response to the resolution of June 22, 1906, certain information concerning the list of national, State, and local commercial organizations, also national, State, and local agricultural associations of the United States; which was referred to the Committee on Interstate Commerce, and ordered to be printed.

FINDINGS OF THE COURT OF CLAIMS.

The VICE-PRESIDENT laid before the Senate the following communications from the assistant clerk of the Court of Claims in the following causes:

- In the cause of Henry Whelen *v. The United States*;
- In the cause of Emily A. Gifford, widow of George P. Gifford, deceased, *v. The United States*;
- In the cause of Frances R. Hunsicker, widow of Joseph L. Hunsicker, deceased, *v. The United States*;
- In the cause of Mary S. McQuade and William A. Chambers, children of William Smith, deceased, *v. The United States*;
- In the cause of Presley M. Rixey *v. The United States*;
- In the cause of James M. Odend'hal, administrator of John W. Odend'hal, deceased, *v. The United States*;
- In the cause of Winnie M. Stillwell, widow of James Stillwell, deceased, *v. The United States*;
- In the cause of A. Nelson Bell *v. The United States*;
- In the cause of George T. Douglass, son of Daniel T. Douglass, deceased, *v. The United States*;
- In the cause of Alexander D. Damon *v. The United States*;
- In the cause of Ferdinand G. Morrill *v. The United States*;
- In the cause of Josephine A. Buell, widow of James W. Buell, deceased, *v. The United States*;
- In the cause of Eleanor R. Swan and Charles B. Swan, heirs at law of Robert Swan, deceased, *v. The United States*;
- In the cause of Ellen L. Faunce, widow of Peter Faunce, deceased, *v. The United States*;
- In the cause of Fred White, son and heir at law of Edward W. White, deceased, *v. The United States*;
- In the cause of Louisa C. Bell, widow of Edward B. Bell, deceased, *v. The United States*;
- In the cause of Katharine M. Burnett, widow of Joseph C. Burnett, deceased, *v. The United States*;

In the cause of Frederick W. Wunderlick *v. The United States*;

In the cause of Clara B. Hassler, widow of Charles W. Hassler, deceased, *v. The United States*;

In the cause of Walter J. Mayer, Alfred J. Mayer, and Ida J. Mayer Storch, heirs of William H. Mayer, jr., deceased, *v. The United States*;

In the cause of Gilbert L. McGowan *v. The United States*; and

In the cause of Harriet S. Lyeth, administratrix of Clinton H. Lyeth, deceased, *v. The United States*.

The foregoing findings were, with the accompanying papers, referred to the Committee on Claims, and ordered to be printed.

ADJOURNMENT TO MONDAY.

Mr. HALE. I move that when the Senate adjourns to-day it be to meet on Monday next.

The motion was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. Browning, its Chief Clerk, announced that the House had passed the bill (S. 1804) providing for the use of certified checks to secure compliance with proposals and contracts for naval supplies.

The message also announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

H. R. 8124. An act to amend section 5136 of the Revised Statutes of the United States, permitting national banking associations to make loans on farm lands as security, and limiting the amount of such loans;

H. R. 11273. An act to incorporate The National German-American Alliance; and

H. R. 14587. An act to authorize the Secretary of the Treasury to issue duplicate gold certificates in lieu of ones lost or destroyed.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a petition of the One hundred and thirteenth Illinois Veteran Volunteer Infantry Association, of Watseka, Ill., praying for the enactment of certain pension legislation; which was referred to the Committee on Pensions.

Mr. DEPEW presented a petition of the congregation of the Second German Baptist Church, of New York City, N. Y., praying for an investigation into the existing conditions in the Kongo Free State; which was referred to the Committee on Foreign Relations.

He also presented a memorial of Huguenot Grange, No. 128, Patrons of Husbandry, of New Paltz, N. Y., remonstrating against the enactment of legislation providing for the free distribution of seeds and plants; which was referred to the Committee on Agriculture and Forestry.

He also presented the memorial of M. D. Pratt and 20 other citizens of Watertown, N. Y., remonstrating against the enactment of legislation requiring the closing of certain places of business in the District of Columbia on Sunday; which was referred to the Committee on the District of Columbia.

Mr. CULLOM presented memorials of sundry citizens of Chicago and Decatur, in the State of Illinois, remonstrating against the enactment of legislation to authorize the closing of certain places of business in the District of Columbia on Sunday; which were referred to the Committee on the District of Columbia.

Mr. BRANDEGEE presented a petition of the Connecticut Baptist Convention, at Hartford, Conn., praying for an investigation into the existing conditions in the Kongo Free State; which was referred to the Committee on Foreign Affairs.

Mr. HOPKINS presented a petition of Mattoon Council, No. 1057, Knights of Columbus, of Mattoon, Ill., praying for the enactment of legislation providing a suitable memorial to the memory of Christopher Columbus; which was referred to the Committee on the Library.

He also presented a petition of the Christian Endeavor Society of Grace Church, of Naperville, Ill., praying for the enactment of legislation to prevent the impending destruction of Niagara Falls on the American side by the diversion of the waters for manufacturing purposes; which was referred to the Committee on Foreign Relations.

He also presented a memorial of sundry citizens of Farmington, Ill., remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which was referred to the Committee on the District of Columbia.

Mr. HALE presented a memorial of Morning Light Grange,

Patrons of Husbandry, of Monroe, Me., remonstrating against any further appropriation being made for the free distribution of seed; which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of the board of aldermen of Biddeford, Me., praying for the enactment of legislation to acquire national forest reserves in the Appalachian Mountains and White Mountains, to be known as the "Appalachian Forest Reserve" and the "White Mountain Forest Reserve," respectively; which was referred to the Committee on Forest Reservations and the Protection of Game.

Mr. DANIEL presented the petition of Joseph L. White, of Harpers Home, Va., praying that he be granted an increase of pension; which was referred to the Committee on Pensions.

He also presented the petition of William H. Willis, of Skipwith, Va., praying that he be granted an increase of pension; which was referred to the Committee on Pensions.

HISTORY OF THE CONGRESSIONAL CEMETERY.

Mr. BURKETT. As a member of the subcommittee of the Committee on the District of Columbia, to whom was referred a bill pertaining to the granting of certain streets in the limits of the Congressional Cemetery for burial purposes, I will state that the subcommittee has gone very considerably into the history and a search has been made of the laws and records pertaining to the Congressional Cemetery. The paper which has been prepared is needed by the committee, and perhaps others, in the further consideration of the bill. I ask that this compilation of records and statutes may be printed as a Senate document.

The VICE-PRESIDENT. The Senator from Nebraska reports from the Committee on the District of Columbia a paper entitled "History of the Congressional Cemetery," and asks that it may be printed as a document. Is there objection? The Chair hears none, and it is so ordered.

MARY LAJORD.

Mr. KEAN, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the resolution submitted yesterday by Mr. NELSON, reported it without amendment; and it was considered by unanimous consent, and agreed to, as follows:

Resolved, That the Secretary of the Senate be, and he hereby is, authorized and directed to pay to Mary Lajord, widow of Thomas Lajord, late a messenger of the United States Senate, a sum equal to six months' salary at the rate he was receiving by law at the time of his death, said sum to be considered as including funeral expenses and all other allowances.

PRESENTATION OF PRIVATE BILLS AND PETITIONS.

Mr. HALE. Mr. President, I have forgotten what is the scope of the rule of the last session with reference to pension bills. Can they be referred without a formal presentation?

The VICE-PRESIDENT. After the morning hour they may be referred by handing them to the Secretary of the Senate.

Mr. HALE. And also petitions?

The VICE-PRESIDENT. Petitions may also be handed in.

The rule adopted at the last session bearing upon this subject is, in part, as follows:

Senators having petitions, memorials, pension bills, bills for the payment of private claims, or for the correction of naval or military records to present after the morning hour may deliver them to the Secretary of the Senate, indorsing upon them their name and the reference or disposition to be made thereof, and said petitions, memorials, and bills shall, with the approval of the presiding officer, be entered on the Journal, etc.

BILLS INTRODUCED.

Mr. HALE introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 6833) granting an increase of pension to Bettie Vose;

A bill (S. 6834) granting an increase of pension to Bethuel P. Gould; and

A bill (S. 6835) granting an increase of pension to George Maybury.

Mr. CULLOM introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 6836) granting an increase of pension to Edward P. Strickland;

A bill (S. 6837) granting an increase of pension to Elisha R. William;

A bill (S. 6838) granting an increase of pension to Samuel Shepherd; and

A bill (S. 6839) granting an increase of pension to Samuel Tyler.

Mr. CULLOM introduced a bill (S. 6840) to authorize continuance of the railroad siding into square No. 737, in the city

of Washington; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. ALGER introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 6841) granting an increase of pension to Mary A. Allen;

A bill (S. 6842) granting an increase of pension to Alonzo D. Lee;

A bill (S. 6843) granting an increase of pension to Harvey McCracken;

A bill (S. 6844) granting a pension to Joseph Freeman;

A bill (S. 6845) granting an increase of pension to Charles R. Moore;

A bill (S. 6846) granting an increase of pension to Edwin W. Parker;

A bill (S. 6847) granting an increase of pension to Ozni S. Perry;

A bill (S. 6848) granting an increase of pension to Edward Seeland;

A bill (S. 6849) granting an increase of pension to Cornelius Cereson;

A bill (S. 6850) granting an increase of pension to Hiram Lobdell;

A bill (S. 6851) granting an increase of pension to Ann E. Hack; and

A bill (S. 6852) granting an increase of pension to Jacob Bristol.

Mr. McENERY introduced a bill (S. 6853) for the relief of the estate of Dominique Pochelu, deceased; which was read twice by its title, and referred to the Committee on Claims.

He also introduced a bill (S. 6854) for the relief of the trustees of Trinity Presbyterian Church, of Lavacca, Catahoula Parish, La.; which was read twice by its title, and referred to the Committee on Claims.

Mr. FRYE introduced a bill (S. 6855) to amend the act approved August 19, 1890, entitled "An act to adopt regulations for preventing collisions at sea;" which was read twice by its title, and referred to the Committee on Commerce.

Mr. CULBERSON introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Public Buildings and Grounds:

A bill (S. 6856) for the purchase of a site for a Federal building for the United States post-office at Bonham, Tex.;

A bill (S. 6857) for the purchase of a site for a Federal building for the United States post-office at Wichita Falls, Tex.;

A bill (S. 6858) for the purchase of a site for a Federal building for the United States post-office at Cameron, Tex.;

A bill (S. 6859) for the purchase of a site for a Federal building for the United States post-office at Terrell, Tex.;

A bill (S. 6860) for the purchase of a site for a Federal building for the United States post-office at Seguin, Tex.; and

A bill (S. 6861) for the purchase of a site for a Federal building for the United States post-office at Clarksville, Tex.

Mr. LATIMER introduced a bill (S. 6862) to provide for the purchase of a site and the erection of a building thereon at Orangeburg, in the State of South Carolina; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

He also introduced a bill (S. 6863) to provide for the purchase of a site and the erection of a building thereon at Newberry, in the State of South Carolina; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

Mr. DILLINGHAM introduced a bill (S. 6864) to correct the military record of David A. Backum; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Military Affairs.

He also introduced the following bills; which were severally read by their titles, and referred to the Committee on Pensions:

A bill (S. 6865) granting an increase of pension to George Nichols (with accompanying papers);

A bill (S. 6866) granting an increase of pension to Louisa D. White;

A bill (S. 6867) granting an increase of pension to Thomas Fisher; and

A bill (S. 6868) granting an increase of pension to Henry A. Minor.

Mr. ALLEE introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 6869) granting an increase of pension to Caroline W. Congdon; and

A bill (S. 6870) granting an increase of pension to William R. Cahoon.

Mr. BURROWS (by request) introduced a bill (S. 6871) re-

quiring the making of an affidavit for labor performed and improvements made during each year on each mining claim, or forfeiture for the noncompliance therewith; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Territories.

Mr. FORAKER introduced a bill (S. 6872) to amend an act entitled "An act authorizing the Winnipeg, Yankton and Gulf Railroad Company to construct a combined railroad, wagon, and foot-passenger bridge across the Missouri River at or near the city of Yankton, S. Dak.;" which was read twice by its title, and referred to the Committee on Commerce.

Mr. BEVERIDGE introduced a bill (S. 6873) to amend the act entitled "An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1907," approved June 30, 1906; which was read twice by its title, and referred to the Committee on Agriculture and Forestry.

Mr. MORGAN introduced a bill (S. 6874) for the relief of the personal representatives of James Rhodes, deceased; which was read twice by its title, and referred to the Committee on Claims.

Mr. LONG introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 6875) granting an increase of pension to Lemuel T. Williams; and

A bill (S. 6876) granting an increase of pension to Jesse L. Pritchard.

Mr. KNOX introduced a bill (S. 6877) to increase the limit of cost for the purchase of site and erection of a public building at Charleroi, Pa.; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

Mr. GALLINGER introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Public Buildings and Grounds:

A bill (S. 6878) to provide for the purchase of a site and the erection of a public building thereon at Berlin, in the State of New Hampshire; and

A bill (S. 6879) to provide for the purchase of a site and the erection of a public building thereon at Rochester, in the State of New Hampshire.

Mr. BACON introduced a bill (S. 6880) for the relief of the trustees of Lutheran Parsonage, of Effingham County, Ga.; which was read twice by its title, and referred to the Committee on Claims.

Mr. HEMENWAY introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 6881) granting an increase of pension to Jefferson Bush;

A bill (S. 6882) granting an increase of pension to Elisha H. Stephens; and

A bill (S. 6883) granting an increase of pension to Thomas W. White.

Mr. CULLOM introduced a bill (S. 6884) for the repeal of the proviso in the act of March 14, 1900, which prohibits the issue or reissue to any national bank circulating notes of the denomination of \$5 in excess of one-third in amount of its circulation outstanding; which was read twice by its title, and referred to the Committee on Finance.

Mr. HALE introduced a bill (S. 6885) granting an increase of pension to William H. Anderson; which was read twice by its title, and referred to the Committee on Pensions.

Mr. DANIEL introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Claims:

A bill (S. 6886) for the relief of the session of the Presbyterian Church of Greenwood, Prince William County, Va. (with accompanying papers);

A bill (S. 6887) for the relief of the trustees of the Primitive Baptist Church, of Front Royal, Va. (with accompanying papers);

A bill (S. 6888) for the relief of the trustees of the Jerusalem Baptist Church and the vestry of Zion Protestant Episcopal Church, of Fairfax Court House, Va. (with accompanying papers);

A bill (S. 6889) for the relief of the trustees of the Methodist Episcopal Church South, of Unison, Va. (with an accompanying paper);

A bill (S. 6890) for the relief of the trustees of the Trinity Methodist Episcopal Church South, of Catletts, Va. (with accompanying papers);

A bill (S. 6891) for the relief of the trustees of the Methodist Protestant Church of Fox Hill, Va.;

A bill (S. 6892) for the relief of the trustees of the Methodist Episcopal Church South, of Upperville, Va.;

A bill (S. 6893) for the relief of the heirs of Thomas N. Towson, deceased;

A bill (S. 6894) for the relief of the trustees of Cedar Grove Church, of Culpeper County, Va.; and

A bill (S. 6895) for the relief of the trustees of the Methodist Episcopal Church South, of Gravelly Run, Dinwiddie County, Va.

Mr. DANIEL introduced a bill (S. 6896) appropriating the sum of \$1,000,000 as a loan to the Jamestown Exposition Company for the purpose of aiding in the payment of the cost of the construction, completion, and opening of the Jamestown Ter-Centennial Exposition on Hampton Roads, Virginia, on April 26, 1907, and to provide for the protection of the Government and insuring the repayment of the said sum of \$1,000,000 by a first lien upon the gross receipts of the said exposition company from all paid admissions to the grounds of said exposition and from all moneys received from concessions after the opening of said exposition; which was read twice by its title, and, with the accompanying paper, referred to the Select Committee on Industrial Expositions.

He also introduced a bill (S. 6897) to change the dates of the opening and closing of the international naval, marine, and military celebration to be held in the year 1907 on or near the waters of Hampton Roads in the State of Virginia, so as to conform to the dates fixed by the Jamestown Exposition Company; which was read twice by its title, and referred to the Select Committee on Industrial Expositions.

Mr. CULLOM introduced a joint resolution (S. R. 77) proposing an amendment to the Constitution in relation to the term of service of the President of the United States, and so forth; which was read twice by its title, and referred to the Committee on the Judiciary.

ADDITIONAL CLERK FOR COMMITTEE ON INDIAN AFFAIRS.

Mr. CLAPP submitted the following resolution; which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Committee on Indian Affairs be authorized to employ an additional clerk until March 4, 1907, who shall be paid at the rate of \$120 per month out of the contingent fund of the Senate.

LUMBER TRADE INVESTIGATION.

Mr. KITTREDGE. I submit a resolution and ask that it be read and lie on the table.

The resolution was read, and ordered to lie on the table, as follows:

Resolved, That the Secretary of Commerce and Labor be, and he is hereby, authorized and instructed immediately to inquire, investigate, and report to Congress, or to the President when Congress is not in session, from time to time as the investigation proceeds, as to the lumber trade or business of the United States which is the subject of interstate or foreign commerce and make full inquiry into the cause or causes of the high prices of lumber in its various stages of manufacture from the log; and the said investigation and inquiry shall be conducted with the particular object of ascertaining whether or not there exists among any corporations, companies, or persons engaged in the manufacture or sale of lumber any combination, conspiracy, trust, agreement, or contract intended to operate in restraint of lawful trade or commerce in lumber or to increase the market price of lumber in any part of the United States.

To carry out and give effect to the provisions of this resolution the Secretary shall have power to issue subpoenas, administer oaths, examine witnesses, require the production of books and papers, and receive depositions taken before any proper officer in any State in the United States.

That the Secretary of Commerce and Labor be required to make the said investigation at his earliest possible convenience and to furnish the information above required from time to time and as soon as it can be done consistent with the performance of his public duties.

PANAMA RAILROAD.

Mr. MORGAN. Mr. President, if I am in order, I ask the Chair to lay before the Senate the resolution I offered on yesterday, with a view of submitting some remarks upon it.

The VICE-PRESIDENT. The Chair lays before the Senate a resolution, which will be read.

The Secretary read the resolution submitted yesterday by Mr. PETTUS for Mr. MORGAN, as follows:

Resolved, That the Committee on Inter-oceanic Canals is directed to inquire and report by bill, or otherwise, whether any or what action of Congress is necessary to bring the alleged corporation of the Panama Railroad within the direct control of the Isthmian Canal Commission or of the Government of the United States.

Mr. HALE. Mr. President—

The VICE-PRESIDENT. Does the Senator from Alabama yield to the Senator from Maine?

Mr. MORGAN. Certainly.

Mr. HALE. I do not wish to interfere with the Senator if he desires to debate his resolution. Of course we all understand that when a Senator introduces a resolution upon any subject and desires to speak upon it that courtesy is granted him. But I wanted to ask the Senator whether he proposes.

after his remarks, if he makes them, any action upon the resolution?

Mr. MORGAN. Not to-day.

Mr. HALE. The President has indicated that he will, at a very near day, submit to Congress a special message upon the subject of the Isthmian Canal, which he has personally investigated, so far as he was able to do so in a short time. In view of that I think the Senator will agree with me that as the message from the President, covering all subjects, and undoubtedly the subject of the Senator's resolution, will soon come in—

Mr. MONEY. If the Senator will excuse me, it is impossible to hear him here.

Mr. MORGAN. The remarks I expect to submit to the Senate to-day are exactly pertinent to the resolution I offered, and they relate to the Panama Railroad Company and the disposition the Congress of the United States ought to make of that very intricate, tangled, and difficult question. I presume the President's message will relate to the Panama Canal, and my speech does not.

Mr. BACON. We are equally in trouble about hearing the Senator from Alabama since he has gone over to be near the Senator from Maine. We can not hear what the Senator from Alabama says. We do not know in this part of the Chamber what has been said by either of the Senators.

Mr. MORGAN. The Senator from Maine, as I understand it, thinks that out of some courtesy to the President of the United States I ought to defer my remarks upon my resolution until the President's message comes in.

Mr. HALE. No; if the Senator will allow me, he is entirely wrong. I do not think the Senator should refrain from making his remarks on his resolution, but I do not think any action should be taken at this time.

Mr. MORGAN. No; I do not wish to take any action to-day.

Mr. HALE. If no action is contemplated by the Senator, I do not think there is any reason for interposing. I do not in any way seek to interfere with the Senator in his remarks.

Mr. MORGAN. All right.

Mr. President, I will ask that the Secretary again read the resolution.

The VICE-PRESIDENT. The Secretary will read the resolution at the request of the Senator from Alabama.

The Secretary again read the resolution, as follows:

Resolved, That the Committee on Inter-oceanic Canals is directed to inquire and report by bill, or otherwise, whether any or what action of Congress is necessary to bring the alleged corporation of the Panama Railroad within the direct control of the Isthmian Canal Commission or of the Government of the United States.

Mr. MORGAN. Mr. President, I wish to present some facts and pertinent observations on the subject of the Panama Railroad, not with a view to the control of its commercial operations by substituting new plans for the conduct of its business or of regulating such conduct, but to place it and its earnings and expenditures and its accountability and management in proper relations of lawful authority and responsibility to the Government of the United States.

I am thoroughly satisfied that no more important legislation connected with the Panama Canal requires the immediate attention of Congress, and this view of the subject includes the preservation of our honor and integrity in respect of our commerce with foreign countries.

To bring this feature of my statement directly to the consideration of Congress and to show its pressing importance, I will present one statement made by the Secretary of War in a recent communication made by him to the chairman of the Committee on Inter-oceanic Canals.

The Secretary of War, in a paper dated June 28, 1906, sent to Hon J. H. MILLARD, chairman of the Committee on Inter-oceanic Canals, to be incorporated in the hearings of the committee, in which he argues in favor of the maintenance of the present relations of the Panama Railroad Company to the Isthmian Canal Commission and the preservation of the present nominal existence of that company under its charter by the State of New York, says:

The whole road is therefore completely under the control of the Isthmian Canal Commission. Meantime the artificial entity of the railroad company is maintained, and most conveniently so, in order that it may discharge the duty of a common carrier doing a commercial business, which, under the existing treaty stipulations, the United States would have no right to evade or escape.

The Secretary of War does not state "the existing treaty stipulations" which "the United States would have no right to evade or escape," or how they would be evaded or escaped if the Canal Commission, chartered by Congress, should conduct or discharge the duty of a common carrier doing a commercial business.

I am not informed, except by the statement or allusions of the Secretary of War, that any treaty stipulations exist which

prohibit the United States from engaging in the business of a common carrier or from discharging the duty of a common carrier engaged in commercial business, especially between its own home ports, as is the case between our continental and insular ports, and the ports of La Boca and Cristobal in the Canal Zone.

If there are treaty stipulations with foreign countries that contain such prohibitions as to the carrying of trade between foreign ports, I am not aware of them.

If such prohibitions exist in the stipulations of treaties with foreign powers, they are evaded and escaped by the maintenance of an "artificial entity"—a dead dummy—such as the Panama Railroad Company is, if evasion or escape from responsibility is sought by the United States. The idea that this Government stands in need of a legal fiction or an "artificial entity" to hold it to the discharge of its obligations or its duty as a common carrier, is not only fictitious, but it is by no means creditable.

The United States owns the charter, the property, and the stock of the Panama Railroad Company absolutely and without exception or reservation, and has enacted laws for the construction of a canal that will virtually destroy the great leading purposes for its creation, as they are declared in its charter. The opening of the canal will destroy the main object of its creation, as stated in its charter, which was to work out a concession from Colombia, now adopted and ratified by Panama, for a commercial railway, almost exclusively for foreign commerce, to connect the Atlantic and Pacific oceans or to bridge the Continental Divide between them at Panama.

When this great commercial purpose is abrogated by agreement between the owner of the railroad and the grantor of the concession, there is an end of the original uses and purposes declared in the New York charter, and a dissolution of the corporate franchise, at the option of the United States, as to all the world, except the creditors of the railroad company.

The United States is supreme sovereign over this property, under the Hay-Varilla treaty, as well as its sole and exclusive owner, and can pay, as it has already assumed, the debts of all creditors and compel a final liquidation of them at any day it may prescribe. No creditor could possibly have a standing in any court to make objection to or to contest the validity of such an act of Congress.

If Congress should enact a law for tearing up the Panama Railroad, no creditor could enjoin such a destruction of the property.

Certainly none could object to the assertion of the Secretary of War that this railroad company has become an "artificial entity." As such it must be considered, and not as a legal entity.

The device of mental ingenuity that has been employed to enshrine the remains of the New York corporation as an "artificial entity" and to give it the semblance of legal validity has taxed to exhaustion the commercial-lawyer craft, the wrecker craft, and the promoters' craft of a brilliant mind, that has used this same corporation in many financial, strategic, and diplomatic exploits that have resulted in national strifes and bloodshed and in ruin to a vast number of innocent people.

I will refer to some of these facts in the course of my remarks and to some of the reasons why the continued use of the corporate name and powers of this company is preserved as an artificial entity.

The Secretary of War, in the statement to which I have referred, gives the following account of the legerdemain employed in constructing this artificial entity:

It hardly seems to me worth while to answer the suggestion with reference to the method by which directors are qualified to sit upon the board under the New York laws. One share of stock is sold by the Government to each director, who pays for the stock, and when he receives the certificate indorses it in blank and signs an irrevocable power of attorney to the United States to transfer it again to the United States on demand, the United States paying \$10 to make valid and binding the option to take over the stock. In this way the director is qualified, and in this way the United States obtains power to obtain the share whenever it is needed and to qualify some one else for the director. The members of the Commission constitute the majority of the board of directors, the chairman of the Commission is the president of the road, and a majority of the executive committee are persons connected with the Commission and directly under the orders of the chairman or president.

The whole road is therefore completely under the control of the Isthmian Canal Commission. Meantime the artificial entity of the railroad company is maintained, and most conveniently so, in order that it may discharge the duty of a common carrier doing a commercial business, which under the existing treaty stipulations the United States would have no right to evade or escape.

The "artificial entity" is thus correctly, but very meagerly, described as to its origin and growth by the Secretary of War. It supplanted seven of the thirteen directors of the company who had no connection with the Panama Canal, and it very gradually took on an infusion of seven canal commissioners, and of new blood in the persons of Señor Obaldia, minister from Panama, and Farnham, clerk of Cromwell.

Cromwell stood to his colors and remained a stockholder, director, member of the executive committee, and general counsel of the Panama Railroad Company since 1893, and general counsel of the New Panama Canal Company since 1896, and general counsel of Panama in her infantile hours, and member and general counsel of the Panama legation at Washington. He holds these and other places connected with the Government of Panama to this day.

Cromwell was sole artificer of this "artificial entity," and he is the only known person who has any need for it. As general counsel his powers, coupled with those of director, and with those of Director Farnham and Director Obaldia, and his influence in other quarters, has been and is as nearly absolute in the control of the railroad as if he was sole owner of the entire stock of the company.

The many offices and functions of Mr. Cromwell, connected with the acquisition and control of the canal and railroad property in Panama, and with every stage of the history of that transaction, and his close advisory relations with the President and Secretary of War, which he has industriously and persistently pressed upon them, and his interference with other officers connected with the canal, and his participation, as the diplomatic agent of the Government of Panama, in negotiating a protocol, or *modus vivendi*, with the Secretary of War touching tariff duties, finance, postal affairs, and the rights and privileges of the United States in respect of supplying food to canal employees and laborers, signalize him as one of the persons referred to in the message of the President of January 8, 1906, in which he says:

I court the fullest, most exhaustive, and most searching investigation of any act of theirs, and if any one of them is ever shown to have done wrong, his punishment shall be exemplary.

The Senate responded to this invitation immediately, and on the 9th of January, 1906, adopted the following resolution:

Resolved, That the Committee on Inter-oceanic Canals, or any subcommittee thereof, be, and are hereby, authorized and directed to investigate all matters relating to the Panama Canal and the government of the Canal Zone and the management of the Panama Railroad Company, to send for persons and papers, and to administer oaths, and employ a stenographer to report such hearings; and that the committee be authorized to sit during the sessions or recess of the Senate, and that all expenses thereof be paid out of the contingent fund of the Senate.

The investigation of "all matters relating to the Panama Canal and the government of the Canal Zone and the management of the Panama Railroad Company" would necessarily include Director and General Counsel Cromwell, and the conspicuous adviser and actor in their most important affairs. The committee could no more overlook him in their investigations than it could neglect to inquire into the conduct and character of the seven Canal Commissioners whose names were sent to the Senate at the same time for confirmation, and were referred to it for investigation.

The conduct and character of all the officers and appointees were put in issue by earnest suggestions of the President. As character does not date from a special time or a special event, or a certain employment, the examination into character and the conduct of which it is the outgrowth is not limited to a given period of time.

Several of the most important men officially connected with the canal and railroad were examined before the committee, and the conspicuous interference of Mr. Cromwell in the business of officers of the canal was shown in their testimony. This was notably the fact in the testimony of John F. Wallace, chief engineer, who had resigned his office.

The committee continued its labors almost daily in the examination of witnesses from the 11th of January until the 26th of February, when Mr. Cromwell was called by direction of the chairman. On his appearance, in great form, he had a written statement, which showed much care in preparation. The opening was as follows:

MR. CROMWELL. Mr. Chairman, I observe from the testimony before the committee that it is a matter of interest upon your part to more definitely learn the facts concerning certain subjects relating to Panama Canal affairs with which I have had anything to do since the purchase of the canal by the United States, and I thank you for the opportunity. My law firm, Sullivan & Cromwell, have been the general counsel of the Panama Railroad Company for over twelve years and of the New Panama Canal Company for nine years.

Mr. Cromwell, foreseeing the evil, like the wise man, hid himself behind the time limit, saying: "I observe from the testimony before the committee that it is a matter of interest upon your part to more definitely learn the facts relating to Panama Canal affairs with which I have had anything to do since the purchase of the canal by the United States, and I thank you for the opportunity."

Cromwell disclosed, as part of his written statement, facts

and assertions that tended to impeach the testimony of John F. Wallace given before the committee on his previous examination; thereupon the following questions were asked the witness and his answers thereto were taken:

Senator MORGAN. Wait a moment, Mr. Cromwell.

MR. CROMWELL (continuing). And with the view of an indefinite stay there.

Senator MORGAN. Wait a moment. Is it your purpose, in bringing forward this statement in respect of Mr. Wallace, to contradict and impeach him?

MR. CROMWELL. I am stating facts.

Senator MORGAN. What is your purpose in bringing it forward? You have been asked no questions. What is your purpose in bringing this forward?

MR. CROMWELL. I am stating facts, Senator.

Senator MORGAN. What is your purpose?

MR. CROMWELL. The purpose indicated by the facts.

Senator MORGAN. That is to impeach and contradict him?

MR. CROMWELL. It is to state the facts as they exist, and I suppose the committee desire the facts.

Senator MORGAN. Do you intend to contradict him?

MR. CROMWELL. If the facts contradict him, he is contradicted.

Senator MORGAN. Do you intend to impeach him?

MR. CROMWELL. If the facts impeach him, he is impeached.

The character of an impeaching witness is always in issue, and Mr. Cromwell, in his effort to impeach Wallace, invited scrutiny into his conduct, especially in respect of Panama Railroad and Panama Canal matters at any and all times when he was officially connected with those companies.

If there could be any legal or other reason for limiting his testimony to the period since the railroad and canal were taken over by the United States, he brushed it away when he voluntarily became a witness to impeach Wallace, and he opened up the investigation of his character and fitness to be a dummy stockholder in the railroad and a director thereof and a member of its executive committee and its general counsel to the limit of the demand for investigation which the President says he courted at the hands of Congress.

But in matters that are far more important to the people and Government of the United States and of Colombia, Panama, and France, Cromwell's conduct in dealing with the Panama Canal and railroad since his first connection with each of these corporations was such that the committee, under the orders of the Senate "to investigate all matters relating to the Panama Canal and the government of the Canal Zone and the management of the Panama Railroad Company" was bound to investigate.

While Cromwell's fitness for office is involved in all the history of his dealings with those corporations, the dangerous use he has made of such opportunities, both before and since their property was turned over to the United States, which he can continue to make, are matters that require investigation and action by Congress.

If the Panama Railroad Company is still a New York corporation, with the same powers and rights it possessed before the majority of the stock was obtained by the old Panama Canal Company, and if said rights and powers are legally unaffected by the ownership of the stock and property by the United States, the board of directors are not restricted in their independence of action by such ownership.

In this undeniable state of facts we can not fail to see that the door is wide open to the majority of the board of directors to make regulations as to the transportation of commerce, or of material for canal construction, or of laborers, or employees, or supplies of food, that would retard or prevent work on the canal for indefinite periods of time.

Should such things happen through the wicked recalcitrancy of directors or of the executive committee, or for reasons that are fully justified in law, morals, honesty, or public policy, what could the President, or Secretary of War, or the Canal Commission, or the superintendent of the railroad do to meet and overcome the difficulty and save the canal? The answer is that they could do nothing legally, or even by force. The Secretary of War, in his statement to the committee of the Senate, suggests that the directors who opposed the will of the President or the Commission would have their stock ownership canceled, and would thereby be disqualified as directors and their places could be filled by appointment. In this he fails to notice that the President has no power to appoint directors in a New York corporation.

Let us go a step further and assume that the recalcitrant railroad directors are Isthmian Canal Commissioners and that the President can remove them from office as commissioners and replace them with others that will obey his orders. We see that the case becomes still more difficult, because the substituted commissioners, acting on their conscience, may do the same thing for which the others were expelled from office.

In all these suppositions the courts would sustain the direct-

ors in the honest exercise of their official rights and powers and the President would be denied the power to prescribe to them a special line of conduct.

I have referred to such possible difficulties to ask the attention of the Senate to the remedy for such unnecessary conflict between the moribund New York corporation and the vital powers of the Canal Commission, which is to disregard the charter of the Panama Railroad Company in respect of all operations of the railroad and place the power where it rightfully belongs, in the conduct of the Isthmian Canal Commission.

I will assume, in supporting this suggestion, that there is always harmony of action, if not full agreement, between the President and the Isthmian Canal Commission; but if there should be discord between them it would still be true, under the Spooner law, that the President must construct the canal through the Isthmian Canal Commission and not without their concurrence or in spite of their refusal to consent to his plans or procedure. The importance of this check upon the power delegated to the President, that he shall construct the canal through the Commission, can not be overestimated. Without it any wild, arrogant, or ignorant person who may happen to be President could inflict injury upon the country that many generations of our people could not outlive. With this check reason and experience can be appealed to to prevent headlong folly or corrupt action.

The President is not permitted to construct the canal through or in harmony with a board of directors of the Panama Railroad Company. That instrumentality being an indisputable factor in the work of canal construction, and being the exclusive property of the United States, when Congress empowered the President to construct the canal through the Canal Commission it no more authorized him to take the rightful control of the railroad from the Commission and place it or leave it in a board of railroad directors than it authorized him to take up the railroad and dispense with its further use.

Above all, it is a blow at the entire work of railroad construction to place the motive power that controls it in the hands of persons, as directors, who are independent of the Commission and are mere agents of an independent New York corporation.

I have said that Cromwell and his following on the board of railroad directors can work mischief to the country that will cause us shame and millions of money. If he and his following were considered, or had the right to be considered as being in the foremost rank of trustworthy men, I would feel bound to point out these things and to warn my countrymen of the dangers that underlie them. The fact that changes in the railroad directorate are possible every year, and in the Canal Commission they have been very frequent, in either case the liability to put bad men in authority is perilous; and, next, the fact that there are no safeguards except impeachment and dismissal from office to protect the country from the Commissioners, and none whatever to protect the country from faithless directors.

In the contract proposed for the construction of the canal the rates of transportation of employees and of contractors and their families is one-half the rates charged to others for like services. The fixing of the rates is not provided for, but, under the New York charter, this is done by the board of directors.

The proposed contract binds the Government to keep up a line of ships between New York and Panama, and San Francisco and Panama, to furnish transportation for laborers and others at half rates, which means that the Government will pay half the costs of such transportation at reasonable rates. I refer to this as showing one item in which the railroad board of directors will control enormous commercial interests at discretion.

To further illustrate the great control that the railroad company exerts over foreign commerce I will quote from the deposition of Richard L. Walker (Hearings, pp. 3042-3043) the following statement of the steamship lines with which the Panama Railroad Company has special traffic agreements to share in their freight and passenger receipts at the rate of 25 per cent on every voyage for transportation across the Isthmus:

Senator MORGAN. I will get you, if you please, Mr. Walker, to give the names of the different steamship lines with whom you have this through billing arrangement to-day.

Mr. WALKER. The Royal Mail Steam Packet Company, from London, Southampton, and New York to Colon; the Leyland Line and the Harrison Line, from Liverpool to Colon; the Hamburg-Amerika Line, from Hamburg and Antwerp to Colon; the Compagnie Générale Transatlantique, from various ports of France to Colon; La Volce, from Italian and Mediterranean ports to Colon; the Compania Transatlantica, from Barcelona and Spanish ports to Colon; the Hamburg-Amerika Line, from New York to Colon; the United Fruit Company, from New Orleans to Colon; the Compania Sud Americana de Vapores, from the west coast of South America to Panama; the Pacific Steam Navigation Company, from the west coast of South America to Panama; the Pacific Mail Steamship Company, from San Francisco and the way ports of Mexico and South America to Panama. I think that is all.

I could add to this statement other very heavy transactions, yielding profits, that are controlled exclusively by the Panama Railroad Company without the knowledge of the members of the Commission, who hold nominal or perfunctory relations to the railroad company as members of the board of directors. As I am stating, in a general way, the abuses to which the Government is exposed through the operations of this railroad company—this "artificial entity"—I will not take time to go into the many instances in which the evidence shows that this free-lance corporation is robbing the people and the Government.

A blind confidence in Mr. Shonts as superintendent of the railroad and Mr. Drake as deputy of Mr. Shonts and Mr. Cromwell as general counsel and Mr. Farnham, his clerk, and Señor Obaldia, minister plenipotentiary from Panama, seems to have saved the Secretary of War from much trouble in superintending railroad matters and in giving out orders to the board of directors, as matters progressed; but it has frequently entailed upon him much perplexity in the post-factum examination of their doings and in revoking their action and excusing their misconduct. The general counsel seems to have been leading counsel in most of these flagrant offenses and is happy in receiving compliments where he deserved punishment.

The "statement" of the Secretary of War submitted to the chairman of the committee on the 28th of June, 1906, after the committee had agreed that no more testimony should be taken until December, I will ask leave to append to my remarks.

In that statement the Secretary enters upon a careful and elaborate defense of Mr. Cromwell against what he calls "suggestions" that had been made in the committee. These suggestions were only questions that were put to Cromwell and Drake while they were endeavoring to explain transactions of the board of directors of the railroad company, that were called to their attention. No argument or suggestion from any member of the committee to emphasize the gravity of the facts as they were detailed was necessary, and no charge was made that did not necessarily arise out of the facts stated by the witnesses.

It seems to me that the belated statement of the Secretary of War is an effort to explain away the facts, rather than to show that any incorrect "suggestions" as to the culpability of Cromwell had been made by any committeeman in the course of the examination.

Cromwell himself could not have written a more astute and plausible argument to excuse or justify these palpable wrongs and frauds against the Government. The fine distinctions he makes as to the rights of stockholders to distribute among themselves, as dividends, money that had been expended necessarily in betterments on the railroad before the United States had acquired the property and to pay these dividends out of cash in the treasury of the company, and by selling bonds of the company, is worthy of the nice inventive skill and the professional ethics of Cromwell.

The difficulty with the explanation of the Secretary of War is that it does not explain. It confuses the situation and is very like the efforts of Cromwell, Drake, and Deming in their testimony before the subcommittee of the Committee of the House on Interstate and Foreign Commerce in February, 1905, to explain how a cash dividend could be honestly declared and paid to stockholders out of money that had been expended in improvements and betterments on the property of the corporation two or three years before the declaration of the dividend. Their stock had been increased in value by such improvements and betterments, but they also wanted the money that had been so expended in addition.

Some of it, if not all of it, had been borrowed on bonds issued by the company, some of which bonds the company had paid and even destroyed, and others were still outstanding in the hands of purchasers. They left these debts unpaid and put the money in their pockets that should have been applied to them.

This was the first successful effort to disprove the truth of the homely adage, "One can not eat his pie and have it." Cromwell's neatest work of inventing plans of overreaching was done in this project of the railroad company to make the United States pay its debts, while they took the money from the Treasury that was owing to the bondholders and divided it among the stockholders. Cromwell seemed almost to have convinced the subcommittee of the House that the bookkeeping system that he so adroitly contrived to prove the justice of this robbery had actually converted the money that had been expended in betterments on the railroad one and two years previously so that it was in "liquid" cash in the treasury.

The lamp of Aladdin never wrought a more magical change of base earth into gold than was accomplished by this magic of bookkeeping. But it failed to deceive the able members of that subcommittee. In their report they left this matter open for

further consideration and confined their applause to the "conspicuously able, progressive, and businesslike management" by the officers of the Panama Railroad, and say that, "owing to the shortness of the session and the great press of business the committee has not been able to take all the testimony which it otherwise would have taken."

The Secretary's suggestion that they passed upon this inquiry is not supported by the record.

They express no opinion as to the dividends or the bonded debt, or financial condition of affairs of the railroad, or as to the bookkeeping tergiversations that Cromwell, Drake, and Deming had so laboriously attempted to explain. The committee were alert, searching, and remarkably apt in searching for the truth of these unique and suspicious specimens of bookkeeping legerdemain, but did not have time to come to any conclusion about them, and they dropped it from their report and only reported the evidence.

It is on this state of the record that the Secretary of War bases the following statement:

The charge against the management of the Panama Railroad Company that the dividends had been improperly declared and bonds improperly issued was first made by General Davis when he was governor of the Canal Zone, in a separate report, as a member of the Canal Commission. The report came to my attention in January, 1905. On January 12, 1905, the House of Representatives authorized the Committee on Interstate and Foreign Commerce, or any subcommittee thereof, to investigate the affairs of the Panama Railroad Company. On January 13, 1905, a committee was appointed, consisting of the following: Mr. SHACKLEFORD, Mr. LOVERING, Mr. ESCH, Mr. TOWNSEND, and Mr. ADAMSON.

The subcommittee reported to Congress that "the testimony shows that the management by the officers and directors of the Panama Railroad has been conspicuously able, progressive, and businesslike." This report was made after the fullest investigation into the question of dividends declared and bonds issued, and in the light of the statement of General Davis in the report already referred to. All the officers of the road were examined by the subcommittee, who went to New York for the purpose, and who examined all the books of the company.

It did not seem to me, after this report, that it was necessary for me further to investigate the question whether the Panama Canal Company was indebted to the United States for an unlawful and improper declaration of dividends before the United States received the canal company's stock in the railroad company. But the question has now been further mooted, and I have taken occasion to investigate the exact condition of affairs in the railroad company with reference to declaration of dividends and issue of bonds.

I think no one will be found to question the universal belief that no abler, wiser, truer, more honest, or more courageous man than Gen. George W. Davis has yet been placed on the Isthmian Canal Commission.

The Secretary could not have carefully read the report of the subcommittee of the House Committee on Interstate and Foreign Commerce before he made that statement.

In order to bring the truth of history to bear on Cromwell's handling of the Panama Railroad, so far as it is available under the screen of concealment that he has so far been able to throw over it, under the assumed shelter of privilege as a lawyer preserving the secrets of his client, in defiance of the rulings of the Senate Committee on Inter-oceanic Canals, I will make another quotation from the statement of the Secretary of War:

The railroad company, prior to 1893, had made large net earnings, some of which were used in declaring dividends and others in constituting a sinking fund to redeem bonds. The last dividend was declared in January, 1893, from earnings in the previous years. In 1893 and 1894 there were losses instead of profits, due to attempted competition with the Pacific Mail Steamship Company. Profits began again in 1895. From January, 1895, until March, 1901, when a dividend of 2 per cent was declared, the directors adopted the policy of declaring no dividends whatever. They devoted their earnings, which were large for those six years, to the reduction of their bonded indebtedness and in part payment for the construction of the La Boca pier, which ultimately cost about \$2,200,000, and other improvements that properly might be regarded as additions to the permanent plant and the capital of the company. The offer to sell the whole property of the canal company, including the shares in the railroad company, was made in January, 1902. Between the time of that offer and its actual acceptance by payment of the \$40,000,000, May 7, 1904, the Panama Canal Company had added to its holdings 24 shares, which it transferred to the United States without an additional compensation over and above the price of \$40,000,000.

The proposition of the canal company to sell its property never became a binding contract by definite and unconditional acceptance of the United States until after the ratifications were exchanged and the treaty between Panama and the United States was proclaimed on February 26, 1904. Indeed, after that the stockholders of the Panama Canal Company had to authorize the sale, and the United States never became bound as upon contract before the proposed sale was completed by the payment of the money. It is hardly necessary for me to detail the occurrences between the first proposition in January, 1902, and the actual transfer, May 7, 1904; but it may be safely asserted that the Spooner Act, which was passed June 28, 1902, prevented the President from accepting the offer of the canal company until it was decided whether Colombia would grant the proper right of way, or until, in view of subsequent events, it was decided that the treaty with the Republic of Panama would be ratified by the Senate of the United States. In other words, the Panama Canal Company was in the attitude of one proposing to sell shares in a company whose proposal was not accepted, but remained open for acceptance until the time when the actual cash was paid.

This statement has the vigor of argument that a lawyer would employ in arguing his own cause and the savor of personal interest that I am sure the Secretary of War did not feel and the force of important constructions of the agreement for the sale of the canal and railroad properties that are antagonistic to the rights of the Government and are serious and unfortunate.

I infer that, in the heat of the Secretary's effort to shelter a friend who has been entangled in a doubtful situation by the testimony of Drake and others on hearings before the committee, he has argued with a zeal that outruns discretion.

But this statement of the Secretary of War opens the door to other inquiries that must be conducted by a comparison of known facts, proven by others, because Cromwell has so far refused to uncover them, and he alone in the United States is in possession of all the details that would explain the uses that have been made of the Panama Railroad in hostility to the laws, public policy, and interests of the Government and people of the United States.

No corporation has ever been made the instrument of more wrongdoing to the people who created it and to other peoples and governments. The Panama Canal Company was chartered by the State of New York on April 7, 1840. The incorporators were thirteen men of character, among the best citizens of the United States, with William H. Aspinwall as leader. The capital stock was \$5,000,000, afterwards raised to \$7,000,000, and the par of the shares was \$100. There were thirteen directors, of whom five were a quorum. The directors were to appoint one of their number president, and all vacancies in the directorate were to be filled by them. The corporation was empowered to take over by purchase a concession made by New Granada to Aspinwall, Stevens, and Chauncey for a railroad connecting the oceans at Panama.

Section 9 provides that stockholders are personally liable to creditors for debts to the amount of the stock held by them.

This company opened the way to the treaty of 1846, which is the most important we ever had with an American state.

The railroad was constructed for a sum less than the capital stock. From 1852 to December, 1904, the net earnings of the company was \$38,859,254.30.

In his deposition before the House committee, Cromwell stated as follows:

Throughout that entire period there were, you see, but two years in which a deficit occurred. Those were the years 1893 and 1894, when the company was trying one of these experiments. This \$38,000,000 is the colossal return of this property, managed as a combined railroad and steamship business.

The CHAIRMAN (Mr. HEPBURN). How much has it diminished its debt during that time?

Mr. CROMWELL. During that period, sir?

The CHAIRMAN. Compare the debt of 1852 with the debt of to-day.

Mr. CROMWELL. Mr. Chairman, there was no mortgage on the property in 1852. It was built with the proceeds of the stock, etc. The company has never issued but two mortgages in all its history.

The CHAIRMAN. When were they issued?

Mr. CROMWELL. The 7 per cent sterling mortgage was issued in 1867, and it matured in 1897. It was for \$4,000,000. In 1897 it was replaced by the present 4½ per cent first mortgage issue. By applying earnings to that purpose we have gradually reduced that issue so that to-day there are outstanding but \$3,150,000 bonds, of which the company itself owns in its own treasury, as treasury assets, \$647,000, leaving only \$2,372,000 in the hands of the public. Thus the original mortgage debt of \$4,000,000 has been reduced to a net outstanding indebtedness of \$2,372,000.

The CHAIRMAN. When you say "this mortgage," you mean the last one?

Mr. CROMWELL. Yes, sir; the present 4½ first mortgage.

The CHAIRMAN. The older one was canceled?

Mr. CROMWELL. Yes, sir; it was canceled in 1897 and replaced by the present one I have referred to. I made the sale of \$2,000,000 of these bonds myself to Messrs. Vermilye & Co., bankers, of New York, as a member of the executive committee. I sold them at a good price, and from the proceeds of the sale of these 4½ per cent bonds, plus \$705,000 cash out of the treasury, we paid off the balance due on the sterling mortgage.

The Panama Railroad Company is never a borrower. Such a thing as issuing a note or bills payable, or anything of that character, is unknown to us. We are always a depositor of money at interest. For years and years, surely as long as I have been connected with the company, it has been a depositor at interest of moneys in the trust companies of New York, and it is at this moment. We seldom have a balance of less than \$500,000 to \$1,000,000 in cash. Our balance now is over \$500,000 at this moment, after paying \$350,000 in dividends on the first of this month. We discount for cash our accounts current for supplies as fast as we can, availing ourselves of every means of discount and economy in that way.

In 1880 De Lesseps came to the United States and organized the American committee, consisting of a member from each of the great New York houses of J. & W. Seligman, Drexel, Morgan & Co., and Winslow, Lanier & Co. Secretary of the Navy, Mr. Thompson, was induced to resign and accept the chairmanship of the American committee, according to the report of the House committee of the Fifty-sixth Congress, at a salary of \$25,000 per annum. General Grant had declined the place.

The American committee purchased for the Panama Canal Company, in 1881, 68,500 shares of the stock of the Panama Railroad, at \$250 per share, that had been selling for \$150.

The committee of the House say in their report:

The fact is that these three banking houses named above received, apparently for the loan of their names, and for nothing else, to this enterprise, the immense sum of 6,000,000 francs, or \$1,200,000—\$400,000 a piece, or \$50,000 a year, was paid these houses without the knowledge of the chairman of that committee, who all the time supposed that he was the important factor in this enterprise and was himself receiving only half of that sum annually.

Such extravagance was a small feature as compared with the expenditure of \$260,000,000 in less than ten years, with an alleged result of the excavation of two-fifths of the canal, and a debt for interest-bearing stock subscriptions and bonds of over 2,600,000,000 francs resting heavily on the stockholders and mainly the industrial people of France, or was, rather, a total loss to them.

The New Panama Canal Company took over all the assets of the old company, and was organized by a court of France under a law of the French Assembly dated July 1, 1893. Under this law France became sponsor for the new company, and distinctly violated the doctrine of all our Congressional resolutions—that no foreign government should construct a canal through the American Isthmus.

The French court organized the new company in pursuance of this statute, with a capital of 65,000,000 francs, under the stipulation that it should complete the canal according to the concessions from Colombia. This capitalization, of which 5,000,000 francs was given to Colombia for extending the concessions to the 31st of October, 1904, the remainder of the capital being \$12,000,000, was only enough to show that it was a mere ruse, intended to deceive Colombia into quietude and to prevent her from forfeiting the entire concession. The promise to complete the canal was made by persons many of whom stood convicted in the courts of France for felonious frauds on the old company. They received pardon for their offenses along with their new charter. First and last they paid in about 75 per cent of their subscriptions for stock, and they or the purchasers of the stock from them have been paid \$18,000,000 by the United States out of the \$40,000,000 deal.

They have put in no money, issued no bonds or additional stock, and have spent about \$9,000,000 in engineering and in scratching over the surface of the Culebra cut, while the dredged channel cut by the old company has been allowed to fill with silt at many places.

To make matters safe against any forfeiture of the canal (Wyse) concession by Colombia, the old company sold the Panama Railroad to this new company. If they completed the canal, they were to have the railroad without any money compensation. If they failed to complete the canal, they were to pay the old company \$5,000,000 for it; but in no case could they sell it. Why was this strange feature introduced into this contract? It must have been because the railroad was a necessary part of the canal for construction purposes, but was protected from reverting to Colombia, under the Wyse concession, in case of its forfeiture, because it was under a New York charter and a separate concession, as to which there was no cause or ground of forfeiture. Mr. Attorney-General Knox, in his opinion on the subject of the canal, says the old and the New Panama Canal companies were partners in all the property after it was turned over to the new company. I quote what he says in his opinion, as follows:

The essential nature of each of the two companies, the New Panama Canal Company and the old Panama Canal Company, is that of a voluntary partnership, their powers being similar to those of an individual Frenchman—an individual merchant corresponding to the new company and an individual who is not a merchant to the old company. These companies have, therefore, the same power to sell their property that an individual Frenchman would have, subject to the right of third parties to oppose the sale because of claims against the property for debts, etc.

The railroad was the only paying asset in the entire partnership, and it was carefully guarded against all comers. Sometimes the dividends were paid to the liquidator of the old company and sometimes to the president of the new company, but how they were divided will remain unknown until Mr. Cromwell consents to answer.

It was obvious from the time and under the circumstances attending the creation of the new company that there was no real purpose to complete the canal, and it was either to be forfeited to Colombia or disposed of to the United States—the only possible future owner.

The proposition to dump it onto the United States, under the charming idea of its "Americanization," was agreed upon by the directors of the new company on the 18th of November, 1898, and was communicated to the President of the United States by

J. Bonnardel, president of the board of directors. It has been often printed, but I will append a copy to my remarks.

Cromwell was asked by Mr. Boyard, agent of the canal company, to become a director in the railroad company, and says he bought 14 shares to qualify himself and others for that office. (See hearings, pp. 1141 and 3062). This date was March 31, 1903. (Hearings, p. 3036.)

Cromwell was appointed general counsel of the railroad in 1893 and of the canal company in 1896. Bonnardel's plan of Americanization was made December 18, 1898, and Cromwell's programme is dated November 21, 1899.

These consecutive events show that the New Panama Canal Company in fact abandoned any purpose to complete the canal, if it ever had any, and to dump the property on the United States, and that Cromwell was appointed general counsel of the railroad and canal company for that purpose.

The desperation of this effort was manifest in the industry, overreaching, and recklessness with which it was followed up.

One point was necessary to be accomplished that caused Colombia to revolt against the demands of the canal company. It was a further prolongation of the Wyse concession from 1904 to 1910—six years. This was one of the professional jobs that Cromwell was to undertake as general counsel for the canal company. The prolongation was not wanted to complete the canal. It was wanted to give more time to exploit the plan for the Americanization of the canal.

The Hepburn bills were passing through the House in successive Congresses, and that fact made the necessity for the extension of the Wyse concession very urgent. Such an extension was a lease of life for the concession that Colombia could not destroy, with France to back the new company which it had created, for twelve years after the date of Bonnardel's offer to the United States, as president of the New Canal Company, on the 18th of November, 1898.

Without such extension it was impossible to get the United States to undertake such a work; or that Cromwell's New Jersey corporation of the "New Panama American Canal," or the company he attempted to organize in 1899, would undertake it, with only six years, or five years, of the life of the Wyse concession remaining.

With the hands of Colombia tied hard and fast, and with France to protect the New Panama Canal Company, it was a safe calculation that some disposition could be made of the canal property and the Panama Railroad that would be profitable to the stockholders of the new company, and Cromwell, as general counsel of the railroad and of the canal, struck out actively for such a result. He held the practical control of both companies and became the negotiator for Marroquin, President of Colombia, and for the canal and railroad properties to bring about a sale to the United States. How he acquired the power over the Government of Colombia to be associated with Concha, Marroquin's minister in the negotiation of the Hay-Concha treaty, he conceals from Congress by refusing to answer questions propounded to him by the Senate committee, on a pretext of professional privilege that could not possibly exist in his favor.

This project of forcing from Colombia an additional concession of time, from 1904 to 1910, led to civil war in Colombia that lasted from 1898 to 1903 and destroyed 100,000 lives and created a debt of \$6,000,000. Cromwell was cognizant of the steps and proceedings that led to this civil war, as is shown by his letter to Secretary Hay of December 5, 1898, which I will append to my remarks.

I will now present a synopsis of the facts known to Cromwell, on which he based the statements in that letter, some of the most important of them being stated in the letter.

Sanclemente was elected President and Marroquin was elected Vice-President of Colombia in 1898 and entered office in the summer of that year. The Congress was elected and took office at the same period. The Congress was elected for two years. After Sanclemente was inducted into the Presidency the Panama Canal Company proposed to him to pay Colombia 5,000,000 francs (\$1,000,000) for an extension of the Wyse concession from 1904 to 1910. He referred the offer to Congress, which was then in session, for ratification, as he was bound to do by the constitution of Colombia. Congress considered the offer and rejected it. Thereupon Sanclemente announced his purpose to ratify the contract as President and accept the 5,000,000 francs, notwithstanding the refusal of Congress to accept the agreement. Congress then declared his office vacant and adjourned sine die and did not again meet. Sanclemente declared Colombia to be in a state of siege and assumed dictatorial powers.

Civil war ensued in many of the provinces, and the Liberal party issued a manifesto.

On the 26th of April, 1900, Sanclemente accepted the 5,000,000

frances from the canal company and issued the decree granting the extension of the Wyse concession from the 31st of October, 1904, to the 31st of October, 1910. Soon after Sanclemente was removed from the Presidency by a decree of the supreme court on the ground that he had violated the constitution by residing away from Bogota, the capital of Colombia, and Marroquin, Vice-President, took office as President. Sanclemente died soon after he was thus deposed, and Marroquin prosecuted the civil war against the Liberals.

The Concha treaty was concluded, the Spooner law was enacted, and the Hay-Herran treaty was concluded and ratified by the Senate while civil war was flagrant in Colombia. It reached Panama, and the Liberal forces gained such victories as to disable Marroquin's forces, unaided, to hold the country.

Our Government took control of the Panama Railroad with the consent of that company to enforce the right of free transit granted in the treaty of 1846, and interposed its power to prevent the Liberals from attacking the city of Panama. The result was a capitulation that provided for the election of a new Congress for Colombia, with the express purpose of ratifying the Hay-Herran treaty.

That Congress met on June 20, 1903, and rejected the Hay-Herran treaty.

That act led to the alleged secession of Panama in November, 1903.

This synopsis of the facts shows that this civil war was the result of the rejection by act of Congress of the offer of the canal company to purchase the extension of the Wyse concession from 1904 to 1910, and the refusal of the people, after the civil war was ended by capitulation, to elect a Congress that would ratify the Hay-Herran treaty, which gave Colombia no voice or part in fixing the price of the sale of the canal and her reversionary rights in it and in the railroad to the United States, but treated the full ownership of both as being in the canal company.

Colombia was permitted to either accept or reject the price of the property fixed by the canal company and no more. She refused the terms, thereby incurring the angry hostility of the President of the United States and of Mr. Cromwell, and her temerity cost her the secession of Panama.

Cromwell's intimacy with Marroquin while he was prosecuting the bitter and bloody civil war to enforce Sanclemente's decree for a six years' further extension of the Wyse concession is shown by his letter that the President sent to Congress with the Concha treaty as an argument in its favor, which I will append to my remarks. His eulogy on the glorious attitude of Colombia, except for its fulsome and vapid exaggerations, would become any Spanish *hidalgo* who ever rattled his spurs or brandished his sword in vindication of his country's honor. Marroquin seems to have resented this officiousness when he refused to urge the ratification of the Hay-Herran treaty upon the Congress of 1903, and incurred the bitter resentment of the President of the United States.

Cromwell, in his examination before the committee, halted at his letter of December, 1898, to Mr. Hay, and, spreading the mantle of professional privilege, as a lawyer, to protect the sacredness of his secrets, refused to make any explanation of that letter or to state anything respecting his knowledge of, or his dealings with, affairs in Colombia until he asserted the fact that he had blossomed out as a Colombian diplomatist, in his letter expounding the Concha treaty. After that exposure he again closed his shell and refused to speak of his participation in the secession of Panama and the negotiation of the Hay-Varilla treaty. He even hides that transaction under the screen of professional privilege, as general counsel for the Panama Canal Company.

This work with Sanclemente and Marroquin, as to which he refused to testify, and a few visits to Paris for consultation, and his letter to Secretary Hay, and his services as counsel, witness, and lobbyist to put down the Hepburn bill in the House of Representatives is all the business he is willing to admit that he did for the Panama Canal Company.

For this he got an allowance for office expenses and for consultations with an engineer, including his fees, and he received not exceeding \$200,000 in money for professional services during his employment by that company, and still has a large sum due from that company which he has been "too busy" to give his attention. No bill has been rendered for what is yet due, and no special contract exists for compensation. This service extended over seven years, nearly \$30,000 per annum, besides his salary of \$6,000 per annum paid by the railroad for eleven years, or \$66,000; in all, \$266,000.

I have traced Cromwell's line of conduct in his dealings with Colombia, which is not wholly concealed, in spite of his alleged professional privilege, that I might point out more distinctly

his line of action, as director and as general counsel of the Panama Railroad, in aid of the purpose of the canal company to break its promise to complete the canal and to prevent Colombia from enjoying its rights under the Wyse concession.

The canal company had no doubt that the railroad, which had yielded more than \$38,000,000 in net profits in a period of fifty years, was as good a piece of property as could be found in the world at a cost of \$18,000,000. That sum is \$1,000,000 in excess of all the cash that the stockholders paid into the New Panama Canal Company, viz, \$12,000,000, and of the \$5,000,000 they were to pay to the old company for the railroad if they failed to complete the canal.

In the event of such failure they would get back all the money they had paid into the treasury of the canal company and would get the railroad for \$5,000,000. So that the transaction was perfectly safe, even if Colombia should acquire all the canal property by the forfeiture of the Wyse concession.

This forfeiture was certain, unless France should interpose to prevent it, for the New Panama Canal Company was neither able nor willing to complete the canal. From the beginning they had no such purpose. Their purpose was to "Americanize" the canal, as they called the dumping operation they planned to get rid of it. Obviously, then, all the value that the canal company could transfer to the railroad from canal work and property was so much saved from the grasp of Colombia, if the dumping operation failed.

In this feature of the operation the talents, skill, experience, and good nature of Cromwell as director, executive committee-man, and general counsel of the railroad company was valuable, and was not overpaid by the salary of \$6,000 per annum and other valuable perquisites.

Among the earlier of many such operations was the sale of cars, locomotives, and other machinery that had accumulated on the hands of the canal company to the railroad company for \$400,000. A purchase that the railroad company had no need to make, and would never have made from a stranger. This money was paid from the gross earnings of the railroad company.

The canal company sold wharfs and derricks to the railroad company and did much work in renewing its tracks and removing them, for which the railroad company paid out of its gross earnings.

The railroad bed was laid and equipped by the Aspinwall company from Colon to the city of Panama, and so continues to the present time. In its concession the railroad company was bound to extend its tracks to deep water at or near Perico Island, a distance of 3 miles. The canal company dug a channel for steamships, about 3 miles long and 30 feet deep, from a point near that island to the coast at La Boca, about 3 miles west of Panama City, and built a pier there for the handling and unloading of ships of the greatest dimensions that come to the Bay of Panama.

All that was done by the canal company was canal work, under the Wyse concession, and in case of its forfeiture it would revert to Colombia. To prevent this the canal company sold its ditch and pier and plant to the railroad company and was paid for it out of the gross earnings of the railroad and in bonds more than \$2,122,000, thus placing that much of the canal property in the ownership of the railroad and out of the reach of forfeiture by Colombia, if the Wyse concession should be forfeited.

To make sure of this ownership of the canal property, through the ratification of the agreement by Colombia and Panama, and to secure the substitution of this agreement as a compliance with the terms of the concession of Colombia to the railroad company that it should build its track out to deep water from the terminus at Panama, the railroad company created a regular diplomatic mission to Bogota, on which, with others, a relative of Marroquin was appointed. The negotiations of these diplomatists were protracted, formal, and astute, and were under the supervision of Counsel Cromwell of the railroad company, who wrote many of the most difficult and intricate dispatches, some of which are spread at large upon the minutes of the railroad company. Drake's testimony gives quite an account of these negotiators and their doings and writings, and shows that the important ministers were officers or stockholders of the railroad company, or of the canal company, and sometimes of both companies. In this fraternization of these companies in a negotiation that added to the property of the railroad company and saved the canal company from the peril of its confiscation, the canal company gave the direction to the operations.

All this diplomatic play furnished the opportunity to Cromwell to draw near to Marroquin and to gain his consent, as President of Colombia, to the sale of the canal concession and

property to the United States on the terms and conditions of the Hay-Concha treaty, which was so greatly extolled in the letter of Cromwell which our President sent to Congress.

Finally, the La Boca matter was closed by heavy payments to Colombia and Panama, and the postponement of the right of Colombia to require the extension of the railroad track to deep water for thirty years. This was a strategic coup that cut Colombia off from claiming the reversion of the La Boca pier and ditch and the railroad leading to it, if the Wyse concession should be forfeited, leaving the railroad concession to stand as thus amended, but the railroad company had to pay all the costs of the campaign out of its gross earnings or bonds.

This American corporation in French ownership and under the twin powers and advantages of an American lawyer, who was general counsel for the railroad company and the canal company, was used to hammer Colombia, who was our near friend since 1846, into terms that made her right to the reversion of the canal property under the Wyse concession of no avail or worth to her, because she had been tricked into a change in the situation by Cromwell's diplomacy that cut her off at least for thirty years from access with a canal to the Bay of Panama by any feasible route. The railroad under this new agreement held the only available route for a canal from Miraflores to the Bay of Panama at least for thirty years, and that ended the whole value of reversionary interest of Colombia under the Wyse concession, and its further forfeiture would have left her by way of reversion only the miserable scrap heap of metal and machinery scattered through the jungle that we have paid for under the head of "Errors and omissions" at an enormous cost. This is the result of the La Boca enterprise. That destroyed the canal route, under the Wyse concession, if it was forfeited to Colombia. In such an event it would belong to the Panama Railroad under the manipulation of Counsel-General Cromwell, but at an enormous cost.

Then bonds began to issue to the public from a company that had never owed a dollar that it could not pay prior to 1896, and deficits began to defame a corporation that had always had money for large dividends after heavy current expenditures.

From 1898 until the Spooner law was enacted Cromwell and Bô rushed their dumping policy until \$40,000,000 was in sight for the canal company, of which the New Panama Canal Company would get \$18,000,000 and the railroad. The contract of sale to the United States was to be completed even at the cost to Colombia of the loss of the State or Province of Panama. And it was lost to Colombia. A decree that is stronger than any law in the statutes or in the treaty books was made, and it brought the ownership of that Canal Zone and the railroad to the United States. Colombia was left out in the cold, in company with the debris of our broken treaty, and Panama "rose as one man" and got the \$10,000,000 we had admitted to be due to Colombia.

While the railroad stock remained in the hands of the "two partners," as Mr. Attorney-General Knox describes the old and the New Panama Canal companies, the quiet robbery of the beehive began while the bees were preparing to leave it, and Mr. Cromwell was the king bee in the devastation.

He objected to the jurisdiction of the committee to inquire into any matter that was antecedent to the date of the sale of the property to the United States, forgetting that he had contended that Bô's offer of sale in January, 1902, was confirmed by the final sale that occurred in May, 1904, and was a part of it, and that he claimed that Bô's offer carried interest until it was confirmed. Mr. Secretary of War also uses this fallacy as a serious argument. Cromwell also forgot that while he was testifying before the committee he was, as counsel for the canal company, pressing a claim before the President as arbitrator for the work done on the canal from the date of Bô's offer until May 19, 1904, amounting to more than \$1,000,000, which demand has been rejected by the President very recently.

This work was done in a way so perfunctory and at such waste of machinery that its value to the United States was almost nil. While doing it they allowed excavated parts of the canal that were dug and dredged by the old company to fill up, and our engineers assert that the machinery turned over to us was, and is, in a state of uselessness; and the great bulk of it has gone into a condition where it is of no value even as scrap iron. They say it would have been an advantage to our work if none of it had been left in the Canal Zone.

It was for this sort of work that the Secretary of War, in his statement, excused and justified the railroad company, under the advice of the "general counsel," in using money that should have been applied to the repair of the old steamships—the *Alliance* and the *Finance*—that were laid up as being unseaworthy. The proposition is distinctly proved that the directors of the railroad company willfully and without excuse suffered its prop-

erty to decay and deteriorate when they had plenty of money to keep it at least in the state of repair that it was in when M. Bô offered to sell it to the United States; and this depreciation ran riot from the time it was known that Bô's proposition to sell it for \$40,000,000 to the United States was agreed to, in every and any event.

Bô's proposition was that of a desperate gambler who was playing for the forlorn hope of saving the New Panama Canal Company all the money it had expended on the canal for the purchase of pardons of felons and the remission of fines they had incurred in robbing the old company. M. Hutin, the director-general of the canal and railroad, had caused the property that was turned over to the new company to be valued by lawful and sworn appraisers. They valued it at \$109,000,000. When the Walker Commission offered an estimate of \$40,000,000 as the value of the property, Hutin refused to accept it and resigned his office, from which he was driven by M. Bô. He was elected president of the board of directors, and hastened to snap up Admiral Walker's tentative bid of \$40,000,000 by cable. The throwing away of \$69,000,000 in this reckless game left a debt due to the French people of more than \$1,000,000,000. When they realized their loss and that the men who had wrecked the old company were pardoned for their crimes, on the promise to complete it for 40 per cent of its profits, and that the Government had opened this door to the final robbery of the people, Paris shook as if in the throes of an earthquake. Cabinet ministers resigned. The French Assembly was thrown into furious excitement, and De Lesseps, the greatest and least culpable of the canal officers, was condemned to the penitentiary while on his deathbed—a vicarious sufferer for the crimes of others.

The Walker Commission thought they could construct the canal at \$5,000,000 saving under the cost of the Nicaragua route, and Cromwell stepped forward and accomplished his plan of Americanizing the Panama Canal by adding to the French debacle the robbery of Colombia, at the cost of civil war.

The directors of the railroad company, who had been chosen by the Panama Canal Company and the general counsel, remained in office from the time of Bô's offer to sell, and before that time, until the United States paid for the property on May 9, 1904, and after that time until April 1, 1905. Some Canal Commissioners were injected into the board, as places could be made for them by resignations, until April 1, 1906, when all the board were elected by order of the Secretary of War and are now subject to his orders in every official act.

It is a pardonable pride of authority he enjoys in being left to his own will, independently of Congress, in directing such a body of directors, and he would have had a peaceful reign but for the inexperienced Shonts and the uncontrollable Cromwell. He has steadily endeavored to repair the breaches of the law and the continuous forays they have made to secure profitable jobs for their friends, such as the postal arrangement, the tariff arrangement, and the supply of food to laborers for the benefit of the Panamanians.

In all these benevolences Cromwell led, representing the Government of Panama as general counsel and the Panama legation as general counsel, and the Panama Railroad, and also the Panama Canal Company. His generosity with the concessions he made for the United States fortunately had the support of an affluent Government, and his altruism had the support of our most generous President and our most amiable Secretary of War.

The statement of the Secretary, which I append to my remarks, does not refer to the Markel contract, or the doctoring of records, or the issue, unlawfully, of \$600,000 in railroad bonds, or the borrowing of money on bonds to pay debts of the Canal Commission, or the use of canal funds to buy ships to let on void charter parties to the railroad company, or the convenience, that was substituted for the law, for handling the current income of railroad earnings, or the failure of the railroad company to account for its earnings and expenditures with the Treasury of the United States. All these and other like transactions have become as familiar as a chronic disorder that attracts neither the sympathy or attention of anyone except the sufferer. They had happened and passed over and are almost forgotten.

We are, happily, a forgetful and forgiving people as to all wrongs and evils that are nonusable for party purposes.

It was some other cases besides the piccadillos I have mentioned that had escaped the public attention until disclosed in the hearings that have called forth the great skill and ability of the Secretary of War to save Cromwell from himself by his statement.

I have noticed one point in that statement about the use of the money of the railroad company in paying dividends from

funds that had long before been expended in betterments and improvements on the property represented by the stock in the company.

I can not conceive of the justice or morality of a party who, after offering property for sale, when the offer is conditionally accepted, engages in the secret work of robbing the property of its value. It is not larceny, because the delivery has not been completed, but it is a meaner crime, because it involves a breach of trust.

I will append to my remarks the entire cable correspondence between the New Panama Canal Company and the Walker Commission, as reported by them, that Senators and others who are new to this subject may be informed. And also a letter and powers of attorney giving to Cromwell the power to renew the offer of the canal company to sell its property after the "Bô" proposal had failed by its own time limitations.

I have only time now to call earnest attention to these facts, with the observation that the Bô offer, which was conditionally accepted by Attorney-General Knox, was in the following words:

PARIS, January 9, 1902.

Admiral WALKER, Washington, D. C.:

The New Panama Canal Company declares that it is ready to accept for the totality, without exception, of its property and rights on the Isthmus the amount of \$40,000,000, the above offer to remain in force up to March 4, 1903.

Bô,
President of the Board.

This was accepted, but failed to materialize, because, according to the saying, "the rabbit must be caught before it is skinned."

Cromwell, nothing daunted, demanded of the Government of the United States a renewal of the agreement with the canal company, in the terms of the very remarkable document which I append to my remarks, sent to me by the Department of State.

There is no actual proof that this agreement was made with the President, but the history of events following it show that it included the plan to assist Panama in her so-called "revolt" against Colombia. What else can be the meaning of this clause, emphasized in italics, in the document lodged in the Department of State by Cromwell? I will quote it.

After reciting that the Bô agreement had expired on the 3d of March, 1903, by the want of ratification of the Hay-Herran treaty, he says:

It is mutually recognized that the ratification of the said treaty, in the form in which it is now pending, at a date anterior to March 4, 1903, is, by the parties, accepted as being in conformity with the offer, the acceptance, and the confirmation above mentioned. *This provision shall apply also to the conclusion of a treaty under another form, or in any way, which may be satisfactory to the United States, and which maintains, without modification, the provisions of articles 1 and 22 of the pending treaty.* It is understood that in any case the term above mentioned may be prolonged by mutual consent of the parties should occasion arise.

The treaty he speaks of is the Hay-Herran treaty, which was rejected by Colombia. The treaty, "in another form, or in any way," is an open threat against Colombia, whose honor he had extolled in his letter on the Conchas treaty.

Here is a clear forecast of the fact that Colombia would be forced to accept the Hay-Herran treaty or else lose Panama through its secession.

No other way to force the sale of the canal to the United States by the canal company was thought of or was imaginable except the then threatened secession of Panama. Thus Cromwell paraded the poisoned chalice before our Government that he was to assist in pressing to the lips of Colombia.

In every aspect of the situation the sale by the canal company of its property to the United States, including the Panama Railroad, was settled in January, 1902, under the Bô agreement, and was secretly continued under the Cromwell act of adoption in 1904.

In these two years, and even after March 9, 1904, when the sale to the United States was completed, the robbery of the treasury of the Panama Railroad went on under the leadership of Cromwell for the benefit of his other client, the Panama Canal Company. This alleged American added another to the list of insolent wrongs that had been inflicted on the United States by this New York corporation in the hands of a French company.

In the statement of the Secretary of War, which justifies these acts and many others of the Panama Railroad Company under the leadership of Cromwell, and is, virtually, a plea for his further continuance in power, I find the following foundation statement of principles and alleged facts upon which the Secretary relies:

The proposal to sell the property of the canal company and its shares of stock in the railroad company contained no representations as to the condition of the railroad company or its treasury or its stock or

its bonds. The proposal was merely to sell the shares held by the Panama Canal Company in the Panama Railroad Company. Under these circumstances the question is what obligation there was on the part of the Panama Canal Company, as the largest stockholder in the Panama Railroad Company, to preserve the value of the shares which it proposed to transfer to the United States. In the first place it is to be noted that the price of \$40,000,000 contained in the proposal did not carry with it interest, and that when the United States paid the fixed price in the proposal it therefore paid no interest. Strictly speaking, there was no contract obligation on the part of the Panama Canal Company to make the sale which it proposed to make in January, 1902, because there was no consideration for the option given which would make the proposal a binding one.

On the authority of the report of the Walker Commission, in explanation of the scope of the offer of M. Bô, which report is dated January 30, 1902, and is unquestionably the statement on which the Spooner law was based, I find that the railroad property, assets, outstanding liabilities, and credits are thus enumerated:

PARIS, January 14, 1902—9.45 p. m.

Admiral WALKER,
President Isthmian Canal Commission,
Corcoran Building, Washington:

We send by mail letter confirming cable 11th January, and, under registered package, judgment August 2, agreement with liquidator, and three extracts showing powers of board. All these documents are certified to by the United States consulate-general.

Bô,
President of the Board.

The "totality, without exception, of its property and rights on the Isthmus," mentioned in the cablegram of January 9, includes the following classes of property:

- | | | | | |
|------------------------|---|---|---|---|
| 1. LANDS NOT BUILT ON. | * | * | * | * |
| 2. BUILDINGS. | * | * | * | * |
| 3. PLANT. | * | * | * | * |
| 4. WORK DONE. | * | * | * | * |
| 5. PANAMA RAILROAD. | * | * | * | * |

Of the existing 70,000 shares of the Panama Railroad, the canal company will transfer to the United States all but about 1,100 shares. These latter are held by a few individuals residing in various parts of the United States and in Europe. As it will not be the policy of the United States to so manage the railroad as to secure a large revenue, it is probable that the holders of these shares will in time find it to their interest to dispose of them at the price fixed by the Commission for the other shares, viz, their par value. At par the value of the 68,863 shares to be transferred to the United States by the canal company is \$6,886,300.

Against this property are mortgage bonds to the amount of \$3,439,000. Of this amount, the company owns \$871,000, which it has pledged as collateral for its debt to the Panama Canal Company described below, and it also holds in its treasury \$1,064,000 subject to sale or cancellation, leaving outstanding in the hands of the public \$1,504,000. The bonds bear 4½ per cent interest.

There are outstanding also \$996,000 6 per cent sinking-fund subsidy bonds, but this liability is an amortization of the annual payment of \$225,000 due the Colombian Government under its concession for the period ending November 1, 1910.

The railroad company owes \$986,918 to the Panama Canal Company, mainly on account of the construction of the pier at La Boca.

Its total liabilities, therefore, are \$2,490,918, not counting the sinking-fund subsidy bonds, for which the Colombian Government has received the benefit and for which it should make allowance to the United States in the negotiations for treaty rights.

Its cash assets January 15, 1902, were \$438,569.33.

It owns three passenger and freight steamers of American registry, the *Alliance*, *Advance*, and *Finance*, of approximately 2,000 tons net each, which, together with a chartered steamer, the *Orizaba*, run between New York and Colon on a weekly schedule. For the past year it has operated a line of chartered steamers of American registry between San Francisco and Panama. These steamers, owned and chartered, on the Atlantic and Pacific constitute the Panama Railroad Steamship Line.

The railroad company owns an undivided half interest in the islands of Naos, Culebra, Perico, and Flamenco, in the Bay of Panama, the Pacific Mail Steamship Company being the joint owner.

Besides its right of way, terminals, wharves, and considerable areas of land, it owns nearly the whole of the town of Colon, the houses there being constructed under leases.

The railroad company has no operating contracts which can not be terminated in ninety days.

The work of constructing the canal will largely increase the business of the railroad, and will enable it to pay off its liabilities in a very few years. After the completion of the canal its commercial profits will probably cease, but it will have a value incidental to operating the canal.

How could it be that this item of cash assets January 15, 1902, \$438,569.33, was put into that statement when "the proposal was merely to sell the shares held by the Panama Canal Company in the Panama Railroad Company?" It is either an impeachment of the veracity of the Walker Commission or of the statement made by the Secretary of War just quoted. It also reflects on Congress for acting on the facts as reported by the Walker Commission without taking notice that we were dealing with the worst set of sharps that had ever been pardoned out of penitentiary convictions by the French Government. I do not think it necessary to follow further the mistaken facts and very questionable conceptions of the moral duties of those who sell property for future delivery, dependent upon future events, to keep the property intact from spoliation

by the vender until the time arrives for the completion of the contract by delivery.

It is quite surprising to hear the Secretary put this proposition of common morality to Congress. He says that "under these circumstances the question is what obligation there was on the part of the Panama Canal Company, as the largest stockholder in the Panama Railroad Company, to preserve the value of the shares which it proposed to transfer to the United States." Such a question, "under the circumstances," is so coldly technical and so oblivious of the duties of these corporations, under the direction of Cromwell, who was general counsel of both companies and director in the railroad company, and was, as he swears, the negotiator of the Bô contract and of the contract, that concluded the purchase of the canal and railroad in a single transaction, that it surprises the country that it could be asked by the Secretary of War.

There was no part of this series of transactions that was not intimately known to Cromwell, including the report of the Walker Commission. If he had stated the doctrines and excuses set up for him by the Secretary of War, in his own testimony, no one would have believed him. As they are stated by the Secretary of War, evidently on information furnished by Cromwell, they must be taken cum grano salis.

Then follows a very complex statement and argument by the Secretary as to the magical bookkeeping by which investments in betterments and repairs that all railroad companies pay out of current earnings, when they are sufficient, are afterwards dug up and converted into cash in the treasury, and paid out to stockholders. This is the same puzzle that the House committee wrestled with and could not solve. This story is impeached on its face as a false excuse for a serious moral dereliction to the deception and injury of the United States. I leave it to the Senate to find any possible excuse for it in the statements of the Secretary of War.

The issue of bonds for the repair of steamers is a flagrant instance of pocketing money in dividends, salaries, and other expenditures that stood ready in the Treasury to pay for ship repairs, and leaving the cost of such repairs to hang over the railroad property as a liability to be paid by the United States. Crafty bookkeeping does not disguise the fact that this debt was created before the United States got control of the property to be paid after the \$40,000,000 was paid by our Government.

The Secretary of War says, "I do not hesitate to say that I think it would have been much wiser if the company had not issued the \$265,000 of bonds, but had paid the whole sum in cash, as it might easily have done, for it had at the time \$700,000 in cash in the treasury."

The benefit of the doubt between wisdom and robbery in creating this debt, which the Secretary kindly gives to Cromwell, might be more tolerable if the \$700,000 had not been distributed in dividends to the New Panama Canal Company, Cromwell's liberal patron, and to himself as a stockholder.

It is due to the Canal Commission to say that none of them were on the railroad board of directors when the bonds were issued to the Cramps for repairs to be put on the ships. When any of them went on the Commission they found the contracts in existence and executed in large part by the railroad company, and it was too late to annul them.

For a piece of fancy work in finance and bookkeeping, the repair of the *Alliança* and the *Finance* has been rarely out-classed.

I will not further comment on the statement of the Secretary of War in exoneration of Cromwell. I have only referred to it as a conclusive proof that the Panama Railroad Company, in the control of the French canal companies, has been the most reckless and predatory agency that ever assailed the commercial interests, the Treasury, and the honor of the United States.

The celebrated Huntington contracts with the Panama Railroad Company for the monopoly of the coastwise traffic crossing the Isthmus and the railroad traffic crossing the continent, which cost our Pacific coast people and others hundreds of millions of dollars, continued for about fifteen years, and went down under adverse legislation by Congress for about two years, when it was renewed with Cromwell's assistance, until it was suppressed recently by order of the President. But this arrangement, in principle, was renewed by agreements with foreign steamship lines, and is the same monopoly under terms that are somewhat different; but they still exclude the ships of all nations, including America, that are not in general lines of transportation companies, on both oceans, from the benefit of the cut rates. No independent vessel can get other than high local rates for railroad services across the Isthmus.

No nation was ever so badgered by its own domestic corporation as we have been by the Panama Railroad. It is time that

these needless and unjust conditions had ended and that the Government was no longer in the shipping business under the sea flag of a dummy corporation. If the Commission or the Government are to engage in the business of common carriers by sea, let it be done openly and at a saving of something of the great expense now attending the maintenance of this New York corporation that the State of New York should have dissolved years ago when it became a party to a wicked and oppressive monopoly.

If reports from credible sources that have come to members of the committee are true, the Panama Railroad Company is quietly looking on at robberies of its income that are very startling. Let the committee ascertain and report the facts as to all matters connected with the questions presented in this resolution before the Senate that the Senate may know what is being done and what should be done by Congress and take action.

I would, in conclusion, invite the attention of the Senate to two features connected with the directorate of the railroad company. First, that the will of the President, or the Secretary of War, acting through the general manager or president of the Panama Railroad Company, is actually inviolable on the part of the directors. This seems to be true in effect, but it is unlawful and violative of the charter in fact and in effect. Congress can not afford to sustain such a despotism over men who are sworn to perform their duty according to law. The members of the Commission who are really forced to become directors in the railroad accept the will of the President of the United States in all matters as the act of the Government, as if it combined all the powers of government, legislative, executive, and judicial, and they obey it without inquiry.

If it can be considered safe and wise to concede such powers to the President, it is still to be considered that he may be in a minority on the Commission composed of men, some of whom are foreigners and others who would be more reliable and less dangerous if they were foreigners. Five members of the board of directors is a quorum to do business under the New York charter. There are six directors whom the President of the United States can not command to do his will without question. Five of them could, under favoring conditions, transact business that would put the Panama Railroad in a position of obstructive hostility to the canal for any cause.

Cromwell has carefully testified that the President of the United States has no power to dismiss a director for any cause. If he is correct as to the security of his official tenure, I would not willingly intrust to him or to any other reckless and ambitious man such powers in dealing with the Panama Railroad Company as have already reddened its career with blood and blackened it with fraud.

These five directors, Mr. President, grouped together, as they seem to be grouped together, under Cromwell's leadership, have got the power to-day to call a meeting, and, if five of them are present, three of that number can enact any law, establish any policy, effect any end that they may choose, destroy this canal work, and hold the Government of the United States in the leash until they can have their sweet will.

Am I to be expected to trust a man who has a record like Cromwell in the leadership of that possible three out of five in the management of this canal? Can this Congress be excused by the people of the United States from its duty to take hold of this question in the right way and prescribe by law what are the duties, rights, obligations, and powers of this railroad company, turning over the control of the whole matter into the hands of the Canal Commission and requiring them to do what the railroad company has never yet done—account to the Government of the United States for its dealings, its incomes and outgoes, and paying over balances in its hands into the Treasury of the United States?

We are hurrying along at a rapid gallop over this great, enormous volcano in that Canal Zone. When we come to absurdities, contradictions, dangers, like those that I have been pointing out to-day, with extreme difficulty to myself, we pass them over and say, "All is well; all is going right; the President of the United States is about to send a message here, after three days' observation, in which he will show that the canal is all right. It does not make any difference, Mr. MORGAN, or Mr. Anybody Else, what you have got to say about it or what the records prove about it or what the testimony that has been taken before this committee shows, it is all right; we are going ahead."

Gentlemen, you will not go much further until you stumble into a pit out of which you can not get. Thank God, I am not of the political majority of this House. It belongs to the other side. That the country must understand, and they will hold you responsible for this very queer, unsatisfactory, and danger-

ous condition. It is our right and our duty to enact a law by which this dummy, this shell, this mere corporate name that lingers on the statute books of New York, should be abrogated and thrown out of the way, and when that property which belongs to the United States Government should be taken control of by the United States Canal Commission and administered honestly, like other property under the laws of the United States and under that sort of accountability which requires every agent of the United States Government to pay in all amounts that are due to the Government and to have appropriations for such expenditures as it must make.

I beg pardon of the Senate for having delayed it to this extent; but I wanted, if I could, to call the attention of the Senate to some of the matters which are hanging along on this railroad route which we are trying to work that are of quite as much importance as it is, possibly, to have this canal constructed, which I think it will not be in the next twenty-five years.

APPENDIX 1.

JUNE 28, 1906.

MY DEAR SENATOR: I beg to acknowledge the receipt of your letter of June 19, in which you say that the Senate Canal Committee has adopted a resolution providing for my submission of a further statement to you, the same to be transmitted to each member of the committee for examination before ordering it to be incorporated in the record of the hearings on Panama matters. I avail myself of this opportunity in order that the time of the committee and my own in the last days of Congress shall not be occupied any more than is necessary with an oral hearing. I should have submitted this statement earlier, but supposed that I would be called again before this for further examination.

DIVIDENDS ON PANAMA STOCK.

The subjects which I wish to discuss had not been developed in the hearings before the committee when I made my previous statement. The first question is, whether the Panama Railroad Company, in 1903 and 1904, improperly declared dividends on the stock of the company in excess of net earnings and improperly paid for ordinary and current repairs to its steamers by an issue of bonds, instead of paying them, as they should have been paid, out of gross earnings. The relevancy of this question to the matter under investigation by the committee is to be found in the following circumstances:

In January, 1902, the Panama Canal Company owned 68,863 shares of the total 70,000 shares of the capital stock of the railroad company, and in that month its representative telegraphed to the Isthmian Canal Commission that it would sell all its property on the Isthmus, including the shares of stock in the Panama Railroad Company, for \$40,000,000, and in fulfillment of that proposition it did, on May 7, 1904, transfer all its property, including its holdings in Panama stock, to the representatives of the United States. If during this interval, dividends were declared and paid on this stock in excess of the net earnings, and not out of profits, but out of the assets of the road, then it is claimed that the dividends received by the Panama Canal Company as stockholder, not out of profits, deprived the railroad company of assets which it should have had when the stock in the company was transferred to the United States; and as the United States by the transfer became the owner of sixty-nine seventieths of the stock, the loss to the United States was substantially equal to the loss in the assets of the company. If this claim be well founded, it would have justified the United States in abating from the \$40,000,000 the \$100,000 thus lost to the assets of the railroad company, or it would now be justified in bringing suit against the Panama Canal Company for this amount.

The charge against the management of the Panama Railroad Company that the dividends had been improperly declared and bonds improperly issued was first made by General Davis when he was governor of the Canal Zone, in a separate report, as a member of the Canal Commission. The report came to my attention in January, 1905. On January 12, 1905, the House of Representatives authorized the Committee on Interstate and Foreign Commerce, or any subcommittee thereof, to investigate the affairs of the Panama Railroad Company. On January 13, 1905, a subcommittee was appointed, consisting of the following: Mr. SHACKLEFORD, Mr. LOVERING, Mr. ESCH, Mr. TOWNSEND, and Mr. ADAMSON.

The subcommittee reported to Congress that "the testimony shows that the management by the officers and directors of the Panama Railroad has been conspicuously able, progressive, and businesslike." This report was made after the fullest investigation into the question of dividends declared and bonds issued, and in the light of the statement of General Davis in the report already referred to. All the officers of the road were examined by the subcommittee, who went to New York for the purpose, and who examined all the books of the company.

It did not seem to me, after this report, that it was necessary for me further to investigate the question whether the Panama Canal Company was indebted to the United States for an unlawful and improper declaration of dividends before the United States received the canal company's stock in the railroad company. But the question has now been further mooted, and I have taken occasion to investigate the exact condition of affairs in the railroad company with reference to declaration of dividends and issue of bonds.

The railroad company, prior to 1893, had made large net earnings, some of which were used in declaring dividends and others in constituting a sinking fund to redeem bonds. The last dividend was declared in January, 1893, from earnings in the previous years. In 1893 and 1894 there were losses instead of profits, due to attempted competition with the Pacific Mail Steamship Company. Profits began again in 1895. From January, 1895, until March, 1901, when a dividend of 2 per cent was declared, the directors adopted the policy of declaring no dividends whatever. They devoted their earnings, which were large for those six years, to the reduction of their bonded indebtedness and in part payment for the construction of the La Boca pier, which ultimately cost about \$2,200,000, and other improvements that properly might be regarded as additions to the permanent plant and the capital of the company. The offer to sell the whole property of the canal company, including the shares in the railroad company, was made in January, 1902. Between the time of that offer and its actual acceptance by payment of the \$40,000,000, May 7, 1904, the Panama

Canal Company had added to its holdings 24 shares, which it transferred to the United States without an additional compensation over and above the price of \$40,000,000.

The proposition of the canal company to sell its property never became a binding contract by definite and unconditional acceptance of the United States until after the ratifications were exchanged and the treaty between Panama and the United States was proclaimed on February 26, 1904. Indeed, after that the stockholders of the Panama Canal Company had to authorize the sale, and the United States never became bound as upon contract before the proposed sale was completed by the payment of the money. It is hardly necessary for me to detail the occurrences between the first proposition in January, 1902, and the actual transfer, May 7, 1904; but it may be safely asserted that the Spooner Act, which was passed June 28, 1902, prevented the President from accepting the offer of the canal company until it was decided whether Colombia would grant the proper right of way, or until, in view of subsequent events, it was decided that the treaty with the Republic of Panama would be ratified by the Senate of the United States. In other words, the Panama Canal Company was in the attitude of one proposing to sell shares in a company whose proposal was not accepted but remained open for acceptance until the time when the actual cash was paid.

The proposal to sell the property of the canal company and its shares of stock in the railroad company contained no representations as to the condition of the railroad company or its treasury or its stock or its bonds. The proposal was merely to sell the shares held by the Panama Canal Company in the Panama Railroad Company. Under these circumstances the question is, What obligation there was on the part of the Panama Canal Company, as the largest stockholder in the Panama Railroad Company, to preserve the value of the shares which it proposed to transfer to the United States? In the first place, it is to be noted that the price of \$40,000,000 contained in the proposal did not carry with it interest, and that when the United States paid the price fixed in the proposal it therefore paid no interest. Strictly speaking, there was no contract obligation on the part of the Panama Canal Company to make the sale which it proposed to make in January, 1902, because there was no consideration for the option given which would make the proposal a binding one.

But let us assume, for the purpose of the argument, that there was a contract binding upon the Panama Canal Company to transfer all its shares in the Panama Railroad Company to the United States, entered into in January, 1902, and to be consummated in May, 1904. The fact that no interest was to be paid on the purchase price is conclusive to show that the Panama Canal Company was entitled to all the dividends on the shares of stock which it held in the Panama Railroad Company that might be legally declared by the directors of the company in accordance with its charter and general rules of law affecting the declaration of dividends by incorporated companies. Now, what is the rule with reference to the declaration of dividends? It is that a dividend may be declared out of the net earnings of the company, and there is no limitation whatever with respect to the time preceding the declaration of the dividend when those net earnings were earned, provided only that they are in the form of money in the treasury of the company when the dividends are declared and have not been permanently changed into capital either by expending them in increasing the permanent plant of the corporation or in reducing its indebtedness. Let us examine the facts to see whether the railroad company has violated this rule in any respect in its declaration of dividends.

The accounts of the company show that the available net earnings of the company, less the losses of 1893 and 1894, from January 1, 1893, to January 1, 1902, amounted to \$2,072,359.42, and that out of that sum there was expended on capital account, for additions to permanent plant, \$1,604,407.12, leaving a balance of net earnings unexpended and in the treasury of the company on January 1, 1902, of \$467,952.30, less a dividend of 2 per cent, paid in March of 1901, of \$140,000.

In other words, the available net earnings in the treasury of the company on January 1, 1902, amounted to \$327,952.30. These net earnings, however, were represented by \$304,919.80 cash, and twenty-two 44 per cent bonds of the company, purchased in open market, of \$23,032.50. For purposes of this discussion I shall consider that only the cash, to wit, \$304,919.80, was available for dividends. On that day the current cash assets of the company in excess of current liabilities amounted to \$861,020.45.

In 1902 the net earnings were \$295,384.40, which added to the undivided profits or net earnings already in the treasury of \$304,919.80, made \$600,304.20. The dividends paid in 1902 were \$280,000, leaving a balance of undivided profits of \$320,304.20. During the year 1902, there were expended out of these profits \$72,682.80 upon permanent plant, which reduced the balance on January 1, 1903, of unexpended profits to \$247,621.40. This was in cash in the treasury. On January 1, 1903, the current cash assets, over and above the liabilities of the company, amounted to \$894,924.49.

The net earnings for the year 1903 were \$401,068.30, which added to the unexpended profits brought over from 1902 of \$247,621.40 made the undivided profits available for the declaration of dividends during the year 1903, \$648,689.70. The dividends declared and paid in 1903 amounted to \$500,000, leaving a balance of \$88,589.70 of undivided profits. There were, however, capital expenditures during the year 1903 of \$20,701.67, leaving a balance of undivided profits on January 1, 1904, of \$67,888.03 in cash. The current cash assets over and above the liabilities of the company on January 1, 1904, amounted to \$722,668.15.

The net earnings of the period from January 1 to May 1, 1904, amounted to \$216,813.03, which, added to \$67,888.03, the undivided profits brought over from 1903, made the undivided profits available for a dividend on the 1st of May, 1904, \$284,801.06. A dividend was paid on the 3d of May of \$175,000, leaving a balance of \$109,801.06. The current cash assets, over and above the liabilities of the company, on May 1, 1904, amounted to \$826,344.30. There should be deducted \$456.50 from the undivided profits charged to capital account for permanent improvement, leaving a balance of undivided profits, in cash in the company's treasury, of \$109,344.56 on May 1, 1904. No dividends were declared or paid to the Panama Canal Company after this, and its stock was transferred to the United States on the 7th of May following.

The figures which I have given above were prepared for me by Mr. Rossbottom, the first assistant secretary of the railroad company, from the books of the company, and are indisputable. I append his statement hereto, marked "Exhibit 1." The figures show, therefore, that instead of the Panama Canal Company, as a stockholder in the railroad company, depriving the United States, as its transferee of

stock, of the benefit to it, of assets of the company by the declaration and payment of dividends in excess of net earnings, there was left in the treasury of the company \$109,344.56 of undivided profits, which the Panama Canal Company might have properly declared as dividends, unless the next transaction that I am about to discuss would have prevented it.

BONDS FOR REPAIR AND RECONSTRUCTION OF STEAMERS.

In 1903, the steamships *Advance* and *Finance*, which were part of the fleet of the Panama Railroad Company, and in active service, became so much out of repair that the insurance companies would not class them as A1, and they had to be put out of commission, and the company was obliged to charter steamers to take their place, at the rate of about \$16,000 a month.

In November, 1905, a contract was made with Cramp & Sons for the reconstruction of these steamers. (See p. 2918 et seq. of record of hearings before this committee.) The directors regarded this expense as properly chargeable to capital account, because it involves practically the rebuilding of the steamers; and therefore they made an agreement with Cramp & Sons by which they were to pay him, for the work to be done on them, \$200,000 in 4½ per cent bonds of the company, which they had in the treasury unissued, and the remainder in cash.

The contract was not to be completed until July or August of 1904. The contract did not fix specifically the time or the total cost. As a matter of fact, it was not completed until some time in August, and the cost of the reconstruction was \$370,000. Meantime, between the making of the contract in November, 1903, and August, 1904, the transfer of the shares of stock had been effected on May 7, 1904, from the Panama Canal Company to the United States, and three of the Isthmian Canal Commissioners had been elected members of the board of directors of the Panama Railroad Company—Admiral Walker and two others. Under the contract, 121 one thousand dollar bonds of the 200 had been delivered to Cramp & Sons for the part of the contract performed on the 7th of May, 1904.

The remainder of the 200 were delivered afterwards, but in August they were returned to the company, and instead of completing the arrangement with Cramp & Sons a new agreement was completed with Vermilye & Co., by which Vermilye & Co. took \$265,000 of the bonds. With something over \$100,000 from the treasury of the company, the whole payment to complete the contract was made in cash to Cramp & Sons, and there was thus added to the bonded indebtedness of the company \$265,000.

I do not hesitate to say that I think it would have been much wiser if the company had not issued the \$265,000 of bonds, but had paid the whole sum in cash, as it might easily have done, for it had at the time \$700,000 in cash in its treasury. The report of the Commission for 1904 stated that "The company issued 265 bonds to the public to pay for the repairs to the *Advance* and *Finance*. These bonds were sold as required by contract made in October, 1903. The balance of the money was taken from a reserved fund of depreciation of steamers, amounting to \$102,750." This statement in the report of the Commission is not exactly correct, because the contract made in October, 1903, only provided for the issue of 200 bonds of \$1,000 each, and the transaction which was actually carried out was not in performance of that contract at all, but made with another party.

The transaction seems not to have met with criticism by the Congressional committee appointed to investigate it. As already said, the board was not under the control of the Secretary of War at the time those bonds were issued, because only three of the Commissioners were then members of the board of directors. The Government did not obtain complete control of the directorate by the election of all the directors until the annual meeting in April, 1905. It is now proposed to purchase all the outstanding 4½ per cent bonds of this issue, which will include, therefore, the 265 bonds.

I do not propose to inquire into the propriety of the company issuing bonds for such a purpose as that of reconstructing steamers. I am bound to admit that it is very questionable, for the reason that it does not add to the capital. It merely supplies a loss to the capital; and such bonds ought not to be issued certainly if dividends are to be declared out of the earnings which might have been used to pay for such reconstruction and making good the capital. But it is one thing to criticize the course of the company in this respect and another thing to show that it has effected any pecuniary injury at all to the United States of which the United States may properly complain. The only bonds issued between November, 1903, and May 7, 1904, were \$121,000. Now, even if these repairs should have been paid out of the earnings of the company instead of by issuing bonds, and there was left a sufficient amount in the treasury of the company out of net earnings or any other fund properly applicable to the payment of the repairs to take up the bonds thus issued for repairs, the United States certainly had no reason to complain.

The fact is that, at the time of the transfer to the United States, there was in the treasury of the railroad company, as already shown, \$109,344.56 of undivided net earnings, and there was also in the treasury, as stated in the report of the Commissioners, which I have cited above, and as shown in the statement of account given by Mr. Rossbottom, the sum of \$102,750 in cash, which had been kept in the treasury for years as a fund to meet the depreciation in value of steamers and tugs, and therefore to be devoted to this very purpose. In other words, there was a fund in the treasury which would pay or take up not only the 120 bonds already issued, but the 200 bonds to be issued under the contract in force at the time of the transfer.

Certainly, therefore, the declaration of dividends out of other net earnings than these was not at all to the prejudice of the United States, and could not be made the basis either for an abatement in the price from the \$40,000,000 or for a recovery of any sum from the Panama Canal Company. It is true that the cost of repairs reached unexpectedly \$370,000; but repairs are current expenses to be paid as they fall due, and there was enough money in the treasury to pay all the repairs, payment for which had fallen due, and nearly \$100,000 more at the time the United States became the chief stockholder.

PRICE PAID FOR OUTSTANDING STOCK.

The second subject, with respect to which I should like to submit a few remarks to the committee, is as to the wisdom of the purchase of the outstanding stock of the Panama Railroad Company at the prices which were paid. There is some evidence given by Mr. Drake in which he said that single shares of the company had been sold as low as 70 or 80 cents sometime prior to the purchase of the shares by the United States. He said that when anyone came into the office offering the stock in small quantities they usually sent the holder of the stock to one J. B. Manning, who bought it up at the price of 75 or 80 cents. Manning was the stockholder who held 234 shares at the time of the transfer to the United States and to whom we were obliged to pay

\$280 a share. I have had a transcript made of Mr. Manning's holdings of stock, as shown by the stock book, and it appears that he purchased no stock after 1902. Therefore it must have been before 1902 when he paid the price of 80 cents. It must be borne in mind that after that time the stock paid dividends. Prior to that time, for six or eight years, it had paid no dividends.

It is not surprising, therefore, that single shares of stock would sell as low as 75 or 80 cents by persons anxious to get rid of it, and whose interest was so small as not to make them careful of the price at which they disposed of it. The truth is that the price which the United States paid to the Panama Canal Company for sixty-nine seventieths of the whole capital stock was, as shown in the estimate of the Commission, at the rate of something over \$100 a share. In the spring of 1904, 100 shares of the stock were offered to Admiral Walker, the chairman of the Commission, at \$100 a share, and I authorized the purchase on this ground.

In January, 1905, when I gave the authority to Mr. Cromwell to make the purchases at \$100 a share, a dividend of 5 per cent had been declared out of the earnings, and there was no reason to suppose that the value of the stock had decreased, because the United States needed the stock, as it was shown, and because the earnings had kept up. It is submitted that it would have been absurd for the United States, having paid more than \$100 a share for sixty-nine seventieths, to seek to buy the outstanding shares at any less price per share.

In order that there may be no mistake or error in respect to the purchase, I beg to attach hereto, as "Exhibit 2," all the correspondence which I had with Mr. Cromwell, and all his accounts, in respect to the buying of the shares. One or two letters of this correspondence are already in the record, but for the sake of clearness I insert them in their proper order in this exhibit.

In testifying before this committee on the 25th of January, 1905, I said, on page 11 of the record of the evidence:

"A gentleman came to me recently and told me that he thought he could get the shares, because of his familiarity with the company and its transactions, for par, with 5 per cent, and I authorized him to make the purchase if he could. But it is quite probable that some of those shares are in the hands of individuals in Wall street who think that they can be made valuable by using them for some other purpose than the benefit either of the Government or of the company; and I think we ought to have the power, by special proceedings, to condemn those shares in the State of New York. The company is a New York corporation, and unless we can control the railroad absolutely as an instrument for the construction of the canal, we shall have to build another railroad there."

Senator KNOX questioned the power to get rid of the minority stockholders by condemnation, and suggested that we ought to make an offer to the minority stockholders, with the statement that the Government was willing to buy the stock on the basis that the old dividends made it worth. He said:

"I think you would have them all coming in on that, would you not? You have an absolute power in the matter."

To which I replied:

"Suppose a dissentient stockholder comes in and says: 'Here is a great opportunity for the stockholders of this company. There is a work to be done down there, and this road is needed for that work.'

"The freight will be increased a hundredfold, and the revenues of the road, if the road is properly conducted—as we have a right to have it conducted under our franchise—will be such that we will probably earn 30 or 40 per cent dividends each year. Now, this majority stockholder property proposes to set us aside with an 8 per cent dividend or a 10 per cent dividend.' Certainly he has a right to be heard in a court of equity."

Senator KNOX. But you certainly do not avoid that difficulty by condemning the stock, because he will raise all those questions on the condemnation proceedings to determine the value of the property.

Secretary TARR. Well, he may; but when we do get rid of him, then we have gotten rid of him, and the condemnation ends the business. If, on the other hand, you are going to lease, you will have constant litigation as to the fairness of your lease."

The subcommittee of the Interstate Commerce Committee of the House of Representatives, in their report, after a full investigation of the affairs of the company, made the following recommendations:

"The committee is of the opinion that the United States should secure ownership of the entire stock of the Panama Railroad Company."

It will be remembered that, at the instance of the President, the House of Representatives passed a law abolishing the Commission and making provision in the law for the condemnation of the outstanding stock of the Panama Railroad Company. When the bill came into the Senate objection was made to the abolition of the Commission, and because of the inability of the two Houses to agree the whole bill failed on the 4th of March, 1905, when that Congress ceased to be. By that time Mr. Cromwell had succeeded in obtaining substantially all the outstanding stock at \$100 a share, except 234 shares held by J. B. Manning and three lots of 10 shares each held by persons whose agents were in Wall street and who had discussed with Mr. Manning the value of the stock, and had agreed with him that they would not accept the offer made by Mr. Cromwell under my authority of purchase at par. Mr. Manning, in the time of De Lesseps, had owned 100 shares of stock in the Panama Railroad Company, and sold it to the Panama Canal Company at what was equivalent to \$280 a share. Thereafter he began to accumulate stock until, in 1902, he had 234 shares. I have taken occasion to find out Mr. Manning's business and his peculiarities and his circumstances in order to show why it was necessary to pay him \$280 a share in order to get his stock.

Mr. Manning has an office on Wall street, and deals in unmarketable bonds and unmarketable stock, and has money enough to hold them until such time as persons interested in the enterprises desire to buy the bonds or stock, and then he exacts a good round price for them. His business is just exactly that of obtaining a nuisance value for odd shares of stock and bonds, a large majority of which are owned by some one who wishes to obtain complete control. He is a man reputed to be worth a million dollars or more, a very keen trader, one who knew the condition of the company, and knew that the company since 1893 had been accumulating its net earnings in shape of reduced indebtedness and enlargement of plant. He reasoned that the United States Government would need the road and that anyone who remained as stockholder might insist upon very large dividends due to the increased business given the road by the United States. He professed the desire not to sell his stock at all, but wished to be a partner in the road with the United States. I had several conversations with Mr. Cromwell on the subject of getting Mr. Manning's stock. After the 4th of March Mr. Cromwell thought that the failure of Congress

to authorize the condemnation of stock made it necessary to secure the stock at once, and at any price. Accordingly Mr. Cromwell called on Mr. Manning, determined to purchase the stock, and finally induced him to accept \$280, the same price which De Lesseps has paid him. Let him back out of his contract, and without an opportunity to consult me, Mr. Cromwell drew his personal check for \$65,000 necessary to make the purchase, sent it out and had it certified, and obtained the stock at once from Mr. Manning. He did the same thing with the holders of the other three lots of ten shares each, though he succeeded in getting them at \$200.

Mr. Cromwell then came to me and said that he had bought these shares at a price which had been unauthorized, and that, therefore, if I declined to pay the price, he was willing to take them as his own property, but would turn them over to me at cost at any time, and would give the Government his irrevocable power of attorney to vote the stock until I could submit the matter to Congress. This was, as the correspondence shows, on the 8th of March. I took time to consider, consulting the President and also Senators ALLISON and SPOONER, and my recollection is that I spoke also to the Speaker of the House, but of this latter I can not be certain.

At my request, Senator SPOONER talked with Senator Gorman on the subject and explained the situation, and the unanimous advice was that the price was a small one to pay in order to obtain all the outstanding stock. Persons who have had any experience in attempting to secure all the shares of stock down to the last one in any corporation, with as many stockholders as this one, understand the great difficulty there is in obtaining it all, and the necessity for paying an exorbitant price to some one who is willing to use the exigency to enforce an unconscionable bargain.

The result is that for the 1,112 shares of stock outstanding, whose par value was about \$111,200, we have had to pay a little less than \$46,000 more than par. When we consider the great difficulties that would be presented in compelling the sale of this stock, the delay in the litigation that certainly would be involved, I must think that it was a very useful settlement for the United States. A dissident stockholder would of course have objected to the United States using the railroad for its own purposes, and could have insisted that all the freight that it carried over the line, whether in the removal of the excavated material or in the transportation of equipment, must be at fairly reasonable commercial rates and that the profit of the transactions should be divided according to the holdings of the stock. Every arrangement effected would have been subject to examination by this dissident stockholder, and might have been carried into a court of equity to prevent the United States from abusing its power as a majority stockholder. The advantage of getting rid of the nagging and the nuisance which would have been caused by such a stockholder, and the inevitable delay thus caused, measured in money value to the United States, far exceeds the \$46,000 which we were obliged to pay to secure the last share of stock.

SHARES HELD BY DIRECTORS.

It hardly seems to me worth while to answer the suggestion with reference to the method by which directors are qualified to sit upon the board under the New York laws. One share of stock is sold by the Government to each director who pays for the stock, and when he receives the certificate indorses it in blank and signs an irrevocable power of attorney to the United States to transfer it again to the United States on demand, the United States paying \$10 to make valid and binding the option to take over the stock. In this way the director is qualified, and in this way the United States obtains power to obtain the share whenever it is needed and to qualify some one else for the director. The members of the Commission constitute a majority of the board of directors, the chairman of the Commission is the president of the road, and a majority of the executive committee are persons connected with the Commission and directly under the orders of the chairman or president.

The whole road is therefore completely under the control of the Isthmian Canal Commission. Meantime the artificial entity of the railroad company is maintained, and most conveniently so, in order that it may discharge the duty of a common carrier doing a commercial business, which under the existing treaty stipulations the United States would have no right to evade or escape.

DELAY IN FILLING REQUISITIONS BY OLD COMMISSION.

Another matter to which I wish to refer is the criticism of the old Commission that it was derelict in making arrangements for a proper purchasing and forwarding bureau in this city. My recollection now is somewhat more distinct on this subject than when I was before the committee. I learned when I was on the Isthmus with Mr. Wallace and General Davis in December, 1904, of the delays in the purchases of material and equipment needed on the Isthmus, and discussed the matter with Admiral Walker. He told me that the great difficulty he had was in getting a proper man. Very soon after we returned from the Isthmus, however, he told me he had found a man. His name was Major Gallagher, and he was in the commissary department. There was some delay in assigning him, but he was assigned and began his duties on the 1st of February, relieving Mr. Redfern.

I ought further to say that after my return from the Isthmus in 1904 I sent down Dr. C. A. L. Reed, of Cincinnati, and Mr. Thomas T. Gaff, of Washington, to act as arbitrators in the assessing of the value of some land which the Commission desired to buy for residences and a hotel in Ancon, just outside of Panama. Doctor Reed is the president of the American Medical Association, and I suggested to him that he make a report to me upon the hygienic conditions which he found on the Isthmus.

He made such a report, but it was so extreme that I submitted it to the Commission for answer. Unfortunately the report was published by Doctor Reed. In this report it was charged that the delay and inefficiency of the Commission in filling the requisitions of the medical department on the Isthmus were the cause of the yellow fever. This was a serious charge, and the Commission was given full opportunity to answer. I think it only fair to the Commission in this record that Doctor Reed's charges and the answer of the Commission and the letter which I wrote forwarding the correspondence to the President should be put in this record. I therefore append it as Exhibit 3.

Very sincerely, yours,

WM. H. TAFT,
Secretary of War.

Hon. J. H. MILLARD,
Chairman Committee on Inter-oceanic Canals,
United States Senate.
(Inclosures.)

APPENDIX 2.

[Translation.]

[Compagnie Nouvelle du Canal de Panama, 7 Rue Louis le Grand, Paris. Capital, 65,000,000 francs.]

PARIS, November 18, 1898.

To the PRESIDENT OF THE UNITED STATES.

SIR: The New Panama Canal Company believes it to be its duty to respectfully submit the following statement:

It is common knowledge that in 1889 the Compagnie Universelle du Canal Interocéanique de Panama, the old company, fell into financial difficulties after about one-third of the canal had been finished. The rights of that company then passed judicial administration. A liquidator (receiver) was appointed by the judgment of the civil tribunal of the Seine under date of the 4th of February, 1889. During his administration (1889-1894) and with the authorization of the court, the greatest care was taken to preserve and maintain the work already done, and a prolongation was obtained from the Republic of Colombia of the time stipulated for the completion of the canal, thus preserving the rights of the company under its concession in their entirety.

In view of the advanced state of the work on the canal and the considerable sum (at least \$150,000,000) actually expended for canal work, properly so called, and for installations and plant, the logical conclusion followed that the very large capital invested would be protected through a reorganization of the affairs, which took place successfully in the month of October, 1894. At that time and with this object in view the undersigned company was organized under the general laws of France. The company is a commercial association, formed exclusively upon private capital, and has no connection, alliance, or relation whatever with any government, except the relations established by the concessions which it holds from the Republic of Colombia. The board of directors of the company is an entirely new board and composed of gentlemen of independent positions, having no official relation with the old Panama company and for the most part identified with large financial and commercial enterprises.

Pursuant to judicial sale, authorized by the court as aforesaid, the undersigned company in 1894 became the sole owner of all the canal works, plant, material, concessions, and other property of the old company. The title of the undersigned to this property is therefore unquestionable, and has been officially recognized by the Government of Colombia.

Surveys had been made by the old company, but the new company, while making use of them, would not be bound by their conclusions. The board of directors resolved at the start to examine and study anew all the questions involved, making use of the most recent improvements in material and of the advances made in engineering.

It is needless for us to enumerate the difficulties and enormous expense involved in the choice of a definite plan for the execution of this work, which is one of the greatest undertakings of our time.

Different plans, equally practicable but varying in probable cost, have been studied. Many months have been spent in preparing, studying, and revising them. This work has not been done hastily and superficially. Engineers, chosen especially for their professional ability, have studied the question in all its details—technical, climatic, physical, geologic, and economic.

Though the skill of its own technical staff is worthy of the highest confidence, the undersigned company, out of abundant caution and in order to place beyond criticism the final conclusions, caused to be appointed an International Technical Commission, composed of engineers selected from different nationalities, a course which assures to the company the benefit of the widest possible experience, the severest judgment, and the most independent conclusions. The International Technical Commission is composed as follows:

M. Robaglia, president, inspector-general of roads and bridges (retired).

M. Bouvier, chairman, inspector-general of roads and bridges (retired).

General Abbot, United States Engineer Corps.

M. Castel, inspector-general of mines (retired).

M. Daynard, chief engineer of La Compagnie Transatlantique.

M. Fargue, inspector-general of roads and bridges (retired).

M. Pteley, chief engineer of the Croton Aqueduct, New York City.

M. Fulscher, private counselor to the minister of public works of Prussia, formerly technical director of the work of the Kiel Canal.

M. Hersent, civil engineer.

M. Hunter, chief engineer of the Manchester Canal.

M. Koch, councillor of public works of Germany; director of Technical Academy of Darmstadt; formerly member of the imperial commission of the Kiel Canal.

M. Jules Martin, inspector-general of roads and bridges (retired).

M. Skalskowski, formerly director of the department of mines to the minister of agriculture and lands of Russia.

M. Sosa, chief engineer, Colombia.

As to all statistical and economic questions, the new company established a special commission, presided over by M. Paul Leroy-Beaulieu, the eminent economist, and a member of the Institute of France.

It is certain that the members of these two commissions are the most distinguished and able men in their professions. No one of them would compromise his reputation and his honor, acquired by a long life of eminent services, by formulating conclusions upon unfounded, incomplete, superficial, or uncertain information.

By the closest study of the subject; by actual inspection of the works of the canal, made by several of its members; by full discussion and by frequent exchange of views; by subjecting every problem to the critical judgment of all, thus obtaining the most varied opinions; by all the methods and with all the care which the most advanced technical experience could suggest, this eminent commission of engineers has reached a unanimous conclusion, which has been officially communicated to this company, and upon which this company is pursuing the work of construction. These conclusions, signed by every member of the commission, establish the entire feasibility and practicability of completing the canal.

We do not doubt that you will be interested to learn the essential features of our plans, which have been prepared with so much labor and care, and confirmed by four years of continuous study.

1. The old company had already substituted for the proposed sea-level canal a system of locks. This principle, with important modifications and improvements, has been adopted by the new company.

2. The length of the canal from ocean to ocean is 46 miles.

3. The locks will not exceed four on each slope of the divide; all locks will have a rock foundation, and all will have double lock chambers.

4. There is nothing in the physical conditions on the Isthmus to prevent a change from a canal with a system of locks to a sea-level canal should the latter seem desirable in the future.

5. The time of passage from ocean to ocean will be less than a day.

6. The harbors situated at either extremity (Panama and Colon) are not artificial harbors; they are natural harbors, safe and satisfactory, needing but slight improvement. This fact is known to all the world, thanks to commerce, which for almost fifty years has made use of the Panama route (the Panama Railroad).

7. Two-fifths of the work on the canal has been actually constructed; the remaining three-fifths is in a fair way of completion. During the last four years three or four thousand workmen, on an average, have been employed in working on the canal.

8. The company's concessions are unquestionable. The Republic of Colombia has given to the enterprise its cordial and sincere cooperation.

9. The existence and operation of the railroad, long established on the proposed line of the canal, greatly facilitates its construction.

10. No construction is planned which is not fully justified by practical experience.

Formerly the greatest difficulties were:

(a) The control of the floods of the Chagres River; and,

(b) The excavation of the Culebra cut.

The manner in which each of these difficulties is to be surmounted is shown with the greatest detail in the report of the technical commission, which we have the honor to present to you.

The condition of the new company is equally satisfactory. Its assets, including the work actually done on the canal, the buildings, the machinery, the material on hand, exceeds in value 500,000,000 francs, or \$100,000,000, which valuation has been made by a special commission, of which the former director of the National Academy of Roads and Bridges of France was chairman. The company has no mortgage or bonded indebtedness. The property is free from all incumbrance. The company has no other debts than monthly pay rolls. Its cash reserve is largely in excess of its actual needs.

The undersigned company also invites your attention to the provisions of its concession, particularly articles 5 and 6, which reserves all rights to the Government of the United States secured by the treaty with the Republic of Colombia signed in 1846 and ratified in 1848.

We have the honor to be, your obedient servants,

J. BONNARDEL,

The President of the Board of Directors.

Certified by the secretary of the company.

ED. LAMPRE.

This was the opening gun of the campaign, and it was charged with smokeless powder, but the shot was fired at Nicaragua. It was heralded by Mr. Cromwell in a letter dated New York, 28th of November, 1898, addressed to Mr. Hay:

Mr. Cromwell to Mr. Hay.

NEW YORK, December 5, 1898.

MY DEAR SIR: I beg leave to confirm the telegram which I sent you at 10.45 this morning, as per inclosure.

Upon my return I learned through Director-General Hutin (who had preceded me to New York) that the measure which had just been acted on by one branch only of the Colombian Congress was a bill to authorize the executive to negotiate the terms of and to conclude a further prorogation of six years from 1904 for the completion of the canal, under a communication which the company had addressed to the Government, in the form of which I inclose you a translation.

You will note that the company specifically stated to the Government that the prorogation was not a matter of absolute necessity, but was desirable in the interests of commerce and navigation to enable an even deeper cut to be made (and which would reduce the number of locks to four), but which reduction would, of course, require more time than the plan adopted.

You will note that the bill proposed to confer power upon the executive, and this happened to arise under extraordinary political conditions in Bogota. As you have probably been advised through official channels, a serious difference has recently been existing between the House of Representatives of Colombia and the President, the House having passed formal resolution declaring the office of President vacant, and refusing to recognize the qualification of the President before the supreme court.

We therefore construe the action of the House of Representatives as only a part of the strife between the House and the President, and not a declaration of the policy of the nation or the Congress in respect of the Panama Canal, and as not evidencing hostility to the company itself. We are the more confirmed in this belief because of the uniform consideration and cordiality displayed by the Congress and the Government to the New Panama Canal Company, which we have no doubt their minister at Washington would fully confirm to you.

Our company has not the least apprehension regarding any prorogation of its concessions it may consider necessary in the future.

I have, etc., your obedient servant,

WM. NELSON CROMWELL,
Counsel New Panama Canal Company.

APPENDIX 3.

General bases with powers of consummation to Mr. Cromwell. New Panama Canal Company. Extract from the record of the minutes of the proceedings of the board of directors. Meeting of October 31, 1903. Left (at the Department) by Mr. William Nelson Cromwell November 21, 1903.

[English translation.]

Present: Messrs. Bô, president; Monvoisin, vice-president; Terrier, vice-president; Georges Martin, secretary; Bourgois, director; Couvreur, director; Forot, director; Gueydan, director; Rischmann, director; Samper, delegate of the Colombian Government.

M. Ganton, liquidator of the Compagnie Universelle du Canal Inter-oceanique, was present at the meeting.

Mr. Cromwell, counsel of the company in the United States, has come to Paris to consider with the board of directors the measures which there may be occasion to take at this time on account of the delay of the ratification of the Hay-Herran treaty on the part of Colombia. He proposed to prepare a draft contract which should be submitted to the President of the United States and which would involve the continuance of the arrangements in force. This draft has been examined by M. Waldeck-Rousseau, and its text has been fixed in the following terms:

"General bases proposed by Mr. Cromwell for an understanding be-

tween the President of the United States and the new company, with a view to reaching the performance of the existing contract of March 3, 1903.

"Considering:

"1. The offer made by the new company, through President Bô, on January 9 and 11, 1902;

"2. The acceptance by the President of the United States, through Attorney-General Knox, on the date of February 17, 1903;

"3. The agreement and confirmation of the new company, through Mr. Cromwell, its general counsel in America, under date of March 3, 1903; and

"4. The treaty of January 22, 1903;

"It is recognized that since the said date of March 3, 1903, the Senate of the United States has duly ratified the said treaty, but that this treaty is still pending in Colombia, awaiting ratification or some other decision; and that by reason of the foregoing (and of various other important circumstances) it is mutually desirable that certain details of the existing contract should be now settled.

"Consequently:

"I. It is mutually recognized that the ratification of the said treaty, in the form in which it is now pending, at a date anterior to March 4, 1905, is, by the parties, accepted as being in conformity with the offer, the acceptance, and the confirmation above mentioned. This provision shall apply also to the conclusion of a treaty under another form, or in any way which may be satisfactory to the United States, and which maintains, without modification, the provisions of articles 1 and 2 of the pending treaty. It is understood that in any case the term above mentioned may be prolonged by mutual consent of the parties should occasion arise.

"II. In the meantime the new company will continue the work of excavation of the canal in a manner in conformity with the plans adopted by the new company and by the Isthmian Canal Commission.

"III. This work of excavation shall be carried on under the inspection of a special commission, which shall be appointed by the President of the United States, to which commission the new company shall grant the fullest liberty and facilities for inspection, examination, and information, in order that if the United States carry out the purchase they may be in a position to continue the work themselves without delay.

"IV. The United States shall assume no obligation concerning this work of excavation and expenditure, unless the proposed purchase be carried out by them, and in that case their obligation shall be only that provided in the following article.

"V. In case of carrying out the proposed purchase, all questions of every nature, as well of fact as of law, relative to the claims of the new company for reimbursement for expenditures made by it after the work included in the estimate of the report of the Isthmian Canal Commission of November, 1901, shall be submitted to the judgment and final decision of the President of the United States as sole arbiter."

This draft is unanimously adopted by the members present at the meeting. M. Ganton states that he also gives his approval.

Full powers are given to Mr. Cromwell to allow him to proceed with the President of the United States in the performance of this proposal. The meeting adjourned at 4 o'clock.

Certified as agreeing with the record of proceedings.

M. Bô,

The President of the Board of Directors.

ED. LAMPRE,

The Secretary-General.

[Translation.]

WASHINGTON, D. C., March 23, 1900.

MR. SECRETARY OF STATE: I should be very grateful if you would kindly do me the honor to grant me an audience on to-morrow, March 24.

Be pleased to accept, Mr. Secretary of State, the assurances of my high consideration and devoted sentiments, together with my anticipated thanks.

M. HUTIN.

Hon. JOHN HAY, Secretary of State, Washington, D. C.

Note handed to Mr. John Hay, Secretary of State of the United States, at Washington, March 24, 1900.

The technical commission appointed by President McKinley in pursuance of the resolution of Congress of March 3, 1899, and presided over by Admiral Walker, will shortly be back in the United States, after examining on the spot the various routes suggested for the opening of a maritime way between the Atlantic and Pacific oceans.

The commission has gathered a large number of investigation documents that have been critically examined, probed, and completed by the personal observations of its members. It has now to draw up its report and formulate its conclusions.

It must be confessed that, whatever be the light in which it is examined, whatever the point of view from which it is considered, the problem of the inter-oceanic canal is an extremely complex question. Its true solution can only be found by seeking it with an impartial mind and an independent intellect.

It is permissible, however, to say truthfully that the manifold questions raised by the problem in both the technical and economical order have often been discussed under the influence of traditions and prejudices that progress and time have been so far unable to eradicate.

It would not be proper, on the other hand, to lay any stress here on the action and importance of the private interests which have in different quarters been involved in this considerable undertaking. We trust we may simply observe that they are worthy of consideration.

But the natural preponderance of certain national rights and interests and the supremacy of international interests must necessarily be borne in mind if the realization and the future of so great a work are to be insured.

Such are the general principles upon which the course followed by the new company of the Panama Canal was mapped out. In order to demonstrate this, it will be sufficient to recall the written and oral communications of the authorized representatives of the company to the President of the United States and to the Secretary of State in the months of November and December, 1898; the written statements handed to the Rivers and Harbors Committee of the House of Representatives and to the President of the United States on the 27th and 28th of February, 1899, and, lastly, the replies made to Admiral Walker, president of the Isthmian Canal Commission, which are set forth in the stenographic report of the last two sittings held at Paris by the said Commission.

In this convention two remarks will find their place here.

The first relates to the crisis which broke out in January, 1900, in the management of the new company of the Panama Canal. It has been alleged, in the furtherance of certain interests, that the declaration made in the United States in 1898 and 1899 by the board of directors of the company had not received the approval of a large group of parties in interest. This is absolutely erroneous. The truth is that for reasons which can not be usefully recited here there arose a conflict of powers. This conflict is now adjusted under conditions satisfactory to all parties.

The second remark bears upon the incorporation, under date of December 27, 1899, of a society styled "Panama Canal Company of America" under the laws of the State of New Jersey.

It is unnecessary for us to say that the new company of the Panama Canal, being, through its public declarations, in honor bound to reincorporate, under certain conditions in accordance with the laws of any one of the States of the Union, will not fall under any circumstances to discharge that obligation.

But it is obviously important that the freedom of action, not only of the new company, but also that of the Government of the United States itself, be reserved until such reincorporation shall be deemed expedient or become necessary.

This is why we hasten to declare that the Panama Canal Company of America holds no contract and has no legal tie with the new company of the Panama Canal.

As we observed at the outset, the Commission presided over by Admiral Walker has completed the first part of its labors.

We feel sure that it will concede that the new company of the Panama Canal did all that was in its power to facilitate its work.

We placed at its disposal, both at Paris and on the Isthmus, all the archives, all the documents that we had in our possession. We have laid before it as long and complete statements as its members may have desired of our technical plans as a whole, of our economical and statistical investigations, and, finally, of the general condition of our company.

We believe that our duty was thus fulfilled. We therefore venture, respectfully, to express our confidence that the Congress of the United States will not legislate and the Government will not come to a decision upon the question of the interoceanic canal until the report of the Commission shall have been filed.

In conclusion, we still have to consider the new situation created by the signing of the convention of February 5, 1900, between the United States and Great Britain.

The effect of Article I of the said convention is to reserve the final form to be given to the solution of the financial questions connected with the execution of the interoceanic canal.

The new company of the Panama Canal will necessarily be called upon to look into these questions at no very distant time. It will address such communications as may be appropriate on this point to the Government of the United States.

M. HUTIN,

President and General Director.

APPENDIX 4.

SULLIVAN & CROMWELL,
New York, March 31, 1905.

SIR: In connection with the presentation by Señor Jose Vicente Concha, minister plenipotentiary and envoy extraordinary from the Republic of Colombia, of a proposed concessionary convention or treaty between the United States and Colombia, to further the completion, operation, control, and protection of the Panama Canal by the United States, I have been requested by the minister, in view of my relation to the subject as general counsel of the Panama Canal Company, and of my knowledge of the minister's views derived from our daily conferences in the preparation of the treaty, to submit the following reflections:

Colombia welcomes the United States to its territory, and will facilitate in every way reasonable within its power the consummation of the desires and needs of the United States for the completion, operation, maintenance, control, and protection of the interoceanic canal across its domain, subject, of course, to the sovereignty of Colombia, and a reasonable and just convention between the two nations.

Colombia views with admiration, as does the rest of the world, the splendid magnanimity, the far-seeing statesmanship, the virile and comprehensive policy which moves this people to construct the greatest undertaking which ever has engaged the attention of mankind, not for its own benefit alone, nor with selfish preference to its own commerce, but for the common benefit, upon equal terms and under universal neutrality in times of peace for all the peoples of the earth.

History does not furnish another instance of such national generosity, patriotism, and wisdom.

This could not but call out from Colombia the warmest response; and that nation takes pride in associating herself with an affair conducted upon such an elevated plane of national and international duty and concern.

The Isthmian Canal Commission, a most distinguished and able body, selected with much care by President McKinley to consider all possible isthmian canal routes and to determine which of them it is most to the interest of the United States to acquire, has reported unanimously that the Panama route is the most practicable and feasible route for an isthmian canal to be under the control, management, and ownership of the United States. Therefore the solution of the problem only involves two other conditions:

1. The sale by the New Panama Canal Company to the United States of the concession, property, and rights of the canal, with the shares of the Panama Railroad Company.

2. A new concessionary convention or treaty with Colombia.

3. The first of these two conditions already has been made easy of fulfillment in the formal acceptance by the New Panama Canal Company of the valuation fixed by the Isthmian Canal Commission—\$40,000,000—and by its duly authorized proposal to the United States for a sale of the property at that price (subject, of course, to a satisfactory convention being arrived at between the United States and Colombia.)

The sole remaining condition, then, is the determination of the concessionary and treaty relations of the United States to a zone of territory across the Isthmus of Panama necessary for the consummation of the undertaking.

There has not been a moment in which Colombia has not entertained the keenest desire to further the designs of the United States, and this sentiment has prevailed under each succeeding administration in Colombia and alike in both of the great national parties who alternately have ruled that country.

This sentiment is neither new born nor inspired by hope of pecuniary gain. The two nations are old friends, and this feeling assumed practical form in 1846, when the treaty of that year was made, which expressly provided for the construction of this canal; in furtherance of which Colombia guaranteed to the United States the free transit of the Isthmus, and granted extraordinary concessions to the people and commerce of the United States, upon terms of perfect equality with its own citizens, while the United States, in turn, guaranteed the neutrality of the Isthmus and of the canal to be constructed upon it, as well as the sovereignty of Colombia over that territory.

It is a significant fact that this treaty of 1846-48, assuring to the United States especial rights and privileges upon the Isthmus of Panama in connection with any interoceanic canal or railroad across the Isthmus of Panama, antedates the Clayton-Bulwer treaty. The treaty of 1846-48 is in full force, as it has continued to be without change from the date of its execution.

Colombia has never made a treaty with any other nation upon the subject of an isthmian canal, although it was at liberty to do so.

These treaty ties cementing their joint design for the construction of a new highway for the world have held the two nations together in common interests and unbroken friendship for more than half a century.

By granting the concessions now owned by the New Panama Canal Company, and by furthering the construction of the canal to its present advanced stage of completion by the old and new Panama Canal companies, Colombia initiated the great work which now, happily, the United States may consummate.

While the minister of Colombia was in Washington for more than a year waiting for the moment when the subject could be seriously and attentively discussed, it is only since January 4, 1902, that anything could be definitely said or done; since then, and then only, was a definite proposal of sale made by the canal company. Immediately thereupon, however, the Government of Colombia, requiring the service of its then minister in other important fields, designated its minister of war, Señor Concha, as minister plenipotentiary and envoy extraordinary, to come at once from Bogota to Washington, charged with its ripest views and amplest instructions, to confer with the executive authorities of the United States, and, after exchange of information and opinions, to reach a satisfactory convention.

Minister Concha has devoted himself, since his arrival a few weeks ago, absorbingly to this task and is prepared to reach a conclusion with the executive officers of the Government.

He is fully empowered to negotiate and sign a treaty, subject only to the ratification of the Colombian Congress, as in like cases with all nations.

But Colombia is in the dark as to the precise desires and needs of the United States upon the subject, and Minister Concha can not, of course, anticipate in his first statement all the reasonable requirements of this Government. He wishes, however, to manifest in the most hearty manner the desire of his Government to facilitate the purposes of the United States, and this disposition is manifested by the comprehensive convention which he has this day submitted to you, but not as an ultimatum. The establishment of a canal convention involves, as you are so well aware, besides the utilization of a canal zone for the construction, operation, maintenance, control, and protection of a canal, railroad, and auxiliary works, as well as a grant renewable perpetually, and a consent to the sale by the New Panama Canal Company (all of which Colombia concedes in the convention submitted), but also numerous other grave questions relating to judicial procedure, punishment of crimes, the capture of criminals, sanitary and police regulations of Panama and Colon, proper regard to the vested interests upon the Isthmus, exemption of the United States from all forms of taxes, port charges, or other dues, etc. Quite aside from pecuniary matters, these are subjects which only can be examined and negotiated directly with you in person and are impossible of negotiation with the Houses of Congress.

Permit me to call attention to the facts that a canal convention in respect of the Isthmus of Panama necessarily involves considerations which do not relate to a section where there is but a wilderness, uninhabited by man, and producing no income to the nation. The convention respecting the Panama route covers a zone which has been the pathway of commerce across the continent for four hundred years, with important cities at its termini, with villages along the route, with a settled population, with considerable property, and with important vested interests to be taken into consideration.

All this represents an increment of value in civilizing influences, in means of protection, in expenditures of national funds for improvement and development, as well as in certitude of engineering plans, of all which the United States now may derive the benefit.

It would be neither in order nor fitting for the canal company or myself to express any views, one way or the other, upon any of the provisions of the proposed treaty, and our reserve in that regard will be noted. However, I beg to refer, by special request of the minister, to Article XXV of his proposed treaty, and which article relates to the pecuniary terms. Colombia is prepared to discuss, negotiate, and decide upon the precise sum or sums which may be reasonable for the United States to pay and for Colombia to ask; but as the subject is in the hands of Congress, and it seems impracticable at the moment to secure a definite expression of the views of the United States upon the subject, Colombia manifests its good faith and reasonableness by proposing that the annuity shall be only such sum as mutually may be agreed upon between the nations, or, failing in such agreement, such fair and reasonable amount as may be determined by a high commission presided over by the president of the International Peace Tribunal of The Hague, the remaining members being nominated in equal number by the two nations. Such annuity would only be fixed once in a hundred years.

The national requirements of Colombia make a payment of \$7,000,000 desirable, and you will note the provisions on that head; but I also ask you to note that Colombia waives the annuity for the first fourteen years. This method insures to the United States the concessionary rights which it requires and which can not be affected or interrupted by any difference or delay respecting the ascertainment of the annuity. The United States is only required to pay such sum as it may agree upon, or as so may be determined to be fair and reasonable. Colombia does not ask more than what may be determined to be fair and reasonable, and surely the United States does not wish to do less than that.

I have the honor to be, Mr. Secretary,

Your obedient servant,

WM. NELSON CROMWELL,
General Counsel New Panama Canal Company.

Hon. JOHN HAY,
Secretary of State, Washington, D. C.

EMPLOYERS' LIABILITY BILL.

During the delivery of Mr. MORGAN's speech,

The VICE-PRESIDENT. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated by the Secretary.

The SECRETARY. A bill (S. 5133) to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon.

Mr. LA FOLLETTE. I ask unanimous consent that the unfinished business be laid aside temporarily.

The VICE-PRESIDENT. The Senator from Wisconsin asks unanimous consent that the unfinished business be temporarily laid aside. Without objection, it is so ordered. The Senator from Alabama will proceed.

After the conclusion of Mr. MORGAN's speech,

ADMINISTRATION OF DISTRICT SCHOOL LAW.

Mr. FORAKER obtained the floor.

Mr. GALLINGER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from New Hampshire?

Mr. GALLINGER. Before the resolution of the Senator from Ohio is laid before the Senate I ask the Senator if he will allow me to present the memorial of Rev. S. L. Carruthers and 16 other citizens of the District of Columbia, in reference to the administration of the school law in this District, in which they ask for an investigation by Congress. I do not commit myself in any way to the memorial.

Mr. LODGE. That is in violation of the rule.

The VICE-PRESIDENT. The Chair will suggest to the Senator—

Mr. GALLINGER. I am going to ask that the memorial be printed as a document, and I think under the rule I am entitled to do that. In other words, I am not presenting it as a petition. If the Chair holds that it is in violation of the rule to present this paper as a memorial at this time I will ask that it be printed as a document and referred to the Committee on the District of Columbia.

The VICE-PRESIDENT. Is there objection to the request of the Senator from New Hampshire? The Chair hears none, and it will be so ordered.

DISMISSAL OF THREE COMPANIES OF TWENTY-FIFTH INFANTRY.

Mr. FORAKER. Mr. President, I desire to call up, if I am in order to do so, resolution No. 180.

The VICE-PRESIDENT. The Senator from Ohio calls up for consideration the resolution named by him, which will be read.

The Secretary read the resolution submitted by Mr. PENROSE on the 3d instant, as follows:

Resolved, That the President be requested to communicate to the Senate, if not incompatible with the public interests, full information bearing upon the recent order dismissing from the military service of the United States three companies of the Twenty-fifth Regiment of Infantry, United States troops (colored).

Mr. DANIEL. Mr. President—

Mr. FORAKER. The resolution which the Secretary has read is the original resolution for which I have offered a substitute.

The VICE-PRESIDENT. Does the Senator from Ohio wish his amendment reported at length?

Mr. FORAKER. No; not necessarily.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Ohio, which has been heretofore read.

Mr. FORAKER. Mr. President, the Senator from Pennsylvania [Mr. PENROSE] is present in the building, and I have sent for him. While waiting for his arrival, I yield to the Senator from Virginia [Mr. DANIEL], if I may be allowed to do so, who, I believe, desires to present some morning business.

Mr. DANIEL. Mr. President, I rise to morning business. I beg leave to offer two petitions and certain bills.

The VICE-PRESIDENT. Under the rule adopted at the last session of Congress it is not in order to interrupt the Senator from Ohio [Mr. FORAKER] for that purpose. The rule to which the Chair refers reads:

It shall not be in order to interrupt a Senator having the floor for the purpose of introducing any memorial, petition, report of a committee, resolution, or bill. It shall be the duty of the Chair to enforce this rule without any point of order hereunder being made by a Senator.

Mr. DANIEL. Mr. President, may I be allowed to state that I did not interrupt the Senator from Ohio, but he reminded the Senate that he was waiting for the presence of a Senator on the other side, and yielded the floor to me without being requested to do so or being disturbed upon the floor, and I am, I think, in order.

The VICE-PRESIDENT. If the Senator from Ohio has

yielded the floor, the Chair will recognize the Senator from Virginia.

Mr. FORAKER. I have not yielded the floor.

The VICE-PRESIDENT. Then the Chair is of the opinion—

Mr. FORAKER. I am sorry that I can not now accommodate the Senator from Virginia in view of the statement of the Chair.

Mr. DANIEL. I have no idea of violating the rule, Mr. President.

Mr. FORAKER. I want to retain the floor.

Mr. DANIEL. Very well.

Mr. PENROSE. Mr. President, I should like to call up my resolution, which I believe was the first one introduced on this subject.

Mr. FORAKER. The resolution is already called up. I will say to the Senator from Pennsylvania that I have called up in his absence the Senator's resolution and my substitute, and they are both now before the Senate. On yesterday, while the Senator was absent, these resolutions were before the Senate and there was some discussion then which I thought indicated that there might be an agreement arrived at. I do not want to interfere with the Senator's resolution, but I want to pass my own; and, if there is no objection to my resolution being considered independently, I am willing to have it so considered, and let the Senator's resolution be considered in that way.

Mr. PENROSE. Mr. President, that suggestion is entirely satisfactory to me. I said when the Senator from Ohio presented his resolution that it was not incompatible with mine, one being directed to the President and the other to the Secretary of War. I would suggest that the vote be taken on my resolution, it having been first introduced; and if that shall be passed, that then the Senate consider the resolution of the Senator from Ohio.

Mr. FORAKER. I want it understood that there is a unanimous agreement that my resolution be presented independently as an original resolution, and that it will not be objected to so that it may have to go over; otherwise I shall insist on its being considered as a substitute for the resolution of the Senator from Pennsylvania.

Mr. PENROSE. I ask unanimous consent that that may be considered as the understanding—that we consider the Senator's resolution as an independent resolution, and not subject to go over on one objection.

Mr. WARREN. I wish to say if the resolution which I offered as a substitute, embodying the subject-matter of both resolutions, is considered as standing in the way of the plan proposed by the Senator from Pennsylvania [Mr. PENROSE], it may be laid aside for the purpose indicated by the Senator from Pennsylvania.

The VICE-PRESIDENT. Is there objection to the request that the amendment proposed by the Senator from Ohio [Mr. FORAKER] shall be regarded as an original resolution and be considered after the disposition of the resolution introduced by the Senator from Pennsylvania [Mr. PENROSE]? The Chair hears no objection; and it is so ordered.

Mr. PENROSE. Mr. President, so far as the resolution introduced by the Senator from Wyoming [Mr. WARREN] is concerned, I would be entirely satisfied with it, but as he has withdrawn it I suppose the only question before the Senate is on the adoption of my resolution.

Mr. SPOONER. Mr. President, the question is on the adoption of the resolution of the Senator from Pennsylvania [Mr. PENROSE], as I understand.

The VICE-PRESIDENT. The question is on the adoption of the resolution of the Senator from Pennsylvania.

Mr. SPOONER. Mr. President, I am opposed to the resolution offered by the Senator from Pennsylvania. My opposition to it is based entirely upon the form of it. This resolution does not, so far as the subject-matter goes, fall within the class of inquiries which the Senate has ever been accustomed to address to the President. It implies on its face, Mr. President, a doubt here which I think does not exist; as to whether the Senate is of right entitled to all the facts relating to the discharge of the three named companies or not. Always the Senate, in passing resolutions of inquiry addressed to Cabinet officers, except the Secretary of State, make them in form of *direction*, not *request*. It rarely has happened that a request has been addressed to any Cabinet officer where foreign relations were involved. Where such a resolution has been adopted it has been addressed to the President, with the qualification that he is requested to furnish the information only so far as, in his judgment, the transmission of it is compatible with the public interest.

There are reasons for that, Mr. President. The State Department stands upon an entirely different basis as to the

Congress from the other Departments. The conduct of our foreign relations is vested by the Constitution in the President. It would not be admissible at all that either House should have the power to force from the Secretary of State information connected with the negotiation of treaties, communications from foreign governments, and a variety of matters which, if made public, would result in very great harm in our foreign relations—matters so far within the control of the President that it has always been the practice, and it always will be the practice, to recognize the fact that there is of necessity information which it may not be compatible with the public interest should be transmitted to Congress—to the Senate or to the House.

There are other cases, not especially confined, Mr. President, to the State Department, or to foreign relations, where the President would be at liberty obviously to decline to transmit information to Congress or to either House of Congress. Of course, in time of war, the President being Commander in Chief of the Army and Navy, could not, and the War Department or the Navy Department could not, be required by either House to transmit plans of campaign or orders issued as to the destination of ships, or anything relating to the strategy of war, the public knowledge of which getting to the enemy would defeat the Government and its plans and enure to the benefit of an enemy.

There are still other cases. The Department of Justice would not be expected to transmit to either House the result of its investigations upon which some one had been indicted, and lay bare to the defendant the case of the Government. The confidential investigations in various departments of the Government should be, and have always been, treated by both Houses as confidential, and the President is entirely at liberty to permit by the Cabinet officer to whom the inquiry is addressed as much or as little information regarding them as he might see fit. I have no doubt the President would transmit everything upon this subject. My objection is to the form of the resolution. I think we ought to maintain the uniform practice upon the subject. I do not think, as to a matter upon which the Senate clearly has a right to be fully advised, it should depart from the usual form of directing the transmission by the Secretary of War or the Secretary of the Navy or the Secretary of the Interior, to adopt a resolution of request of the President, bearing upon its face a recognition of the fact that he is at liberty to withhold the information or to transmit such part of it as he shall see fit.

Mr. President, in time of peace as to matters relating to the organization and the administration of the Army there can be no secrecy. It is purely domestic public business, as to which the Congress has a right to know. I should be very much disappointed if in a matter of this kind the Senate should address the inquiry to the President, coupled, as it must be, with the suggestion that we doubt our right to the information. I think it is a bad precedent to establish. In such matters I think we ought to maintain the practice which, so far as I remember, hitherto has been unbroken. Therefore I am opposed to the form of the resolution of the Senator from Pennsylvania. I am in favor of the form of the resolution of the Senator from Ohio.

Mr. FORAKER. Mr. President, I desire only to say a word of the same general character as that which has been spoken by the Senator from Wisconsin [Mr. SPOONER]. My objection to the resolution offered on yesterday by the Senator from Wyoming [Mr. WARREN] was that under it the President would have a right to withhold information particularly called for by the resolution I had offered. Senators will observe when they come to look at that resolution that nothing is called for except only that which is specifically described, and that it is all of a character such as the Senate is clearly entitled to. No one has the right to withhold it from the knowledge of the Senate if the Senate asks for it. That was the only objection I had to having my resolution incorporated with the resolution offered by the Senator from Pennsylvania in a resolution such as was offered by the Senator from Wyoming [Mr. WARREN] on yesterday. The same objection, of course, lies to the suggestion which was made, also, by the Senator from Pennsylvania that we might unite the resolutions. If the Senate sees fit to adopt it, I have no objection to the resolution offered by the Senator from Pennsylvania; but I shall insist in any contingency upon the consideration of my own resolution as calling for information we are clearly entitled to without anybody giving his judgment whether or not it is our right to have it.

Mr. LODGE. Mr. President, on the matter of precedents I have only had a moment to look back. My memory was that we had sent many inquiries to the President which did not refer to foreign relations. On looking hastily back through a book

from the Secretary's desk, I find in the Fifty-ninth Congress the following resolution, offered by the Senator from Minnesota [Mr. NELSON], was adopted:

Resolved, That the President is hereby requested, if not incompatible with the public interests, to transmit to the Senate the reports of the Keep Commission on Department methods, relating to official crop statistics and the investigation of the Twelfth Census report on agriculture.

It seems nothing could be more purely domestic than that. I find another, as follows:

Resolved, That the President be requested to furnish the Senate, if not incompatible with the best interests of the service, the petition and accompanying papers of certain officers of the Army, veterans of the civil war, retired from active service for disability contracted in the line of duty, and who have not yet received the benefits of the act of April 23, 1904.

Those are two very recent ones. I thought I remembered some relating to the Philippines, and I find there are some. This book only goes back to the Fifty-eighth Congress, but I find a resolution submitted by Mr. Hoar, as follows:

Resolved, That the President be requested, if not in his opinion incompatible with the public interest, to inform the Senate whether there be any law or regulation in force in the Philippine Islands which will prevent any native of those islands who may so desire, not under arrest and against whom no charge of any offense against the United States is pending, from coming to the United States and stating his views or desires as to the interest of his people to the President or either House of Congress.

Mr. SPOONER. When was that adopted?

Mr. LODGE. That was referred to the Committee on the Philippines, and printed. It was not adopted. The other two that I read were adopted. I have no doubt that others could be found. Certainly, I think that there can be no question that resolutions of inquiry have been addressed to the President on all possible subjects. In this case, he being Commander in Chief of the Army, it seems to me it is perfectly proper in form to address a resolution to him on a subject where he has taken direct action and about which there is a great deal of public feeling and has been a great deal of public discussion. It seems to me the proper way to get the facts before us is to make inquiry, not only of the War Department, but of the President himself, so that he may have an opportunity to state to Congress in the fullest official manner the reasons which actuated him in rendering this decision, which, of course, as we all know, is peculiarly his own.

Mr. WARREN. Mr. President, I take it for granted the President will find some way to put the Senate in possession of any information he has that he wishes to put before it. On the other hand, it seems to me entirely proper for the Senate to ask the President for such information as the Senate wants, and that he is the proper one to ask. And believing that the Senate and the country want all the information obtainable I am willing, if I have the opportunity, to vote for both resolutions, the one proposed by the Senator from Pennsylvania [Mr. PENROSE] and the one proposed by the Senator from Ohio [Mr. FORAKER]. I know of no rule against such action. I know of no custom against it. I know of no reason why we should not adopt both resolutions as presented here, though by all means we should indorse the one directed to the President whether or not we adopt the other one.

Mr. TELLER. Mr. President, the precedents cited by the senior Senator from Massachusetts [Mr. LODGE] might be increased in great number. For many years past, even during the war, it was a frequent occurrence to call on the President for information. I myself have been somewhat of a stickler in reference to the form of resolutions of inquiry. We request the President, and we direct the Cabinet officers; but, after all, the whole matter of communicating information to this body by Cabinet officers is absolutely under the control of the President. If the President declines or thinks such information should not be sent, it is not sent. We request the President for information, "if not incompatible with the public interest." That is merely a courteous form of making the request. If we left out the expression "if not incompatible with the public interest," he would still have authority to withhold any information. I think it will be found that the rule among Cabinet officers, whenever requests of delicacy or importance have been presented by Congress, has been to consult the President in relation thereto.

Mr. LODGE. Will the Senator allow me to ask him a question in that connection?

The VICE-PRESIDENT. Does the Senator from Colorado yield to the Senator from Massachusetts?

Mr. TELLER. Certainly.

Mr. LODGE. My memory is that there have been cases within comparatively recent years where Cabinet officers having been directed by resolution of the Senate to send certain information to it, have withheld entirely, or withheld in part, such information by order of the President.

Mr. TELLER. Undoubtedly.

Mr. LODGE. I think it occurred under Mr. Cleveland on more than one occasion, and I think it has occurred in relation to the Department of the Interior quite recently, though I do not remember the exact date.

Mr. CARMACK. Mr. President—

The VICE-PRESIDENT. Does the Senator from Colorado yield to the Senator from Tennessee?

Mr. TELLER. Yes.

Mr. CARMACK. I think that occurred in a former session of Congress when an answer to a resolution of mine asking the Secretary of the Treasury for certain information was declined on the ground that it would be incompatible with the best interests of the public service.

Mr. TELLER. Mr. President, there are undoubtedly a large number of precedents of that kind. I had occasion some time ago to consult the precedents running back forty or fifty years, and I have a very distinct recollection of a number of cases where Presidents have declined to communicate information both to the House and to the Senate.

I do not think there is any impropriety in our asking the President in a courteous, proper manner to communicate information to the Senate. I am under the impression, Mr. President, that the better practice would be to ask the Secretary of War, the Secretary of the Treasury, or the Secretary of the Navy, whoever it might be that had the matter under control, without annoying the President and adding to his work. But, so far as I am concerned, I am willing to vote for a resolution asking the President for information, or I am willing to vote for a resolution asking the Secretary of War for information; but I do not think we ought to ask them both. It seems to me we ought to confine ourselves to one or the other. I simply express my preference for the method of asking the Secretary of War, instead of asking the President. If the President or the Secretary of War wish to communicate on the subject, they know how to do so by direct message to this body.

Mr. LODGE. Mr. President—

The VICE-PRESIDENT. Does the Senator from Colorado yield to the Senator from Massachusetts?

Mr. TELLER. Certainly.

Mr. LODGE. I was going to say that the resolution I read requesting the President for certain information in regard to veterans of the civil war was introduced by the Senator from Colorado [Mr. TELLER] himself.

Mr. CARTER. Mr. President, briefly, and principally to address myself to the Senator from Wisconsin [Mr. SPOONER], I think it may be taken for granted that as a matter of mere official ethics the address of the resolution of the Senator from Pennsylvania [Mr. PENROSE] to the President of the United States is deferential and correct. It must not be lost sight of that the President represents the executive department, a coordinate department of the Government. The right of the President, because of his character as Chief Executive of the Nation, charged with the conduct of our foreign affairs, to be the sole judge as to the communication to Congress of matters relating to our international affairs was well stated by the Senator from Wisconsin.

The Senator further proceeded to say that in case of actual war it would be obviously improper for the Senate to call upon the Commander in Chief of the Army and Navy for plans of battle or campaigns, for drafts of fortifications or lines of defense, or for any information which, if made public, might militate against the interests of the country. But the Senator undertakes to differentiate by saying that this is a time of peace, and, therefore, the directions of the President with reference to the Army must be under a different rule as relates to the legislative department from that which would obtain in time of war. The logic of that, I think, will not be apparent to the mind of the Senator from Wisconsin when he reflects upon the particular facts in this case as made known by current information. It is alleged, and not denied, that the troops engaged in the controversy concerning which we seek information actually committed murder in the State of Texas.

Mr. FORAKER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from Ohio?

Mr. CARTER. I do.

Mr. FORAKER. I do not know whether I correctly understood the Senator. I understood him to say that it is charged, and not denied, that the troops mentioned, or some of them, committed murder in the State of Texas. I want to say to the Senator that I am not surprised that he makes that statement, because that is the popular understanding as I gather from the newspapers; but, nevertheless, it is not true. The record shows that that charge is denied, and there is a great deal of testi-

mony, if not the weight of testimony, in favor of the denial. But that is a matter upon which I do not wish to enter. It is a matter we can discuss after we get the facts for which the resolutions call, one of which facts is the testimony that has been submitted. We can then look it over and see what the state of facts is.

Mr. CARTER. It is not necessary to the elucidation of the point I desire to make that I should characterize the current report as correct or incorrect. I will merely state, then, that it is alleged, and not denied, that certain soldiers of the United States at a point in Texas disturbed the public peace.

Mr. FORAKER. Mr. President, if the Senator will allow me, that also is denied. The question which has been under consideration when the testimony has been taken has been whether or not the soldiers, or any of them, participated in this so-called "shooting up" of the town. The testimony does not clearly show that any of them did, and there is testimony to show that none of them did.

Mr. CARTER. Then, in order to reach an understanding—

Mr. TILLMAN. Mr. President—

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from South Carolina?

Mr. CARTER. If the Senator from South Carolina will permit me, I will say that it is alleged—

Mr. FORAKER. Yes.

Mr. CARTER. That some disturbance occurred at a point in Texas for which soldiers of the United States were responsible.

Mr. FORAKER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from Ohio?

Mr. CARTER. Most assuredly I yield.

Mr. FORAKER. I do not wish to be overly particular about this, but I have seen so much of this statement, assuming that this, that, and the other thing has been done, that I feel called upon to set the Senator right in the hope that I may at the same time set a great many other people right.

Mr. CARTER. I will say to the Senator that I do not assume anything. I say it is alleged. Does the Senator from Ohio deny the fact that it is alleged?

Mr. FORAKER. I do not deny that it is alleged that troops belonging to this command were guilty of the offense to which the Senator refers, but what I want to get before the Senate is that it is denied, and there is a very strong lot of testimony in support of that denial. What the fact is I do not pretend to say. I want to get all the facts, and then we can find out.

Mr. CARTER. Then, Mr. President—

Mr. TILLMAN. Mr. President—

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from South Carolina?

Mr. CARTER. I yield to the Senator from South Carolina.

Mr. TILLMAN. I was merely going to remark that I saw in the Washington Post this morning what purports to be an advance copy of something the Secretary of War will send to us in his annual report, and he has thought it of sufficient moment to give it to the press ahead of its official presentation. If I am not mistaken, I saw in that report, or that alleged report—we have to speak by the card this morning, it appears—

Mr. CARTER. The Senator had better put it that way.

Mr. TILLMAN. That the Secretary of War practically asserts what the Senator from Montana asserts; and the Secretary of War certainly would not give out to the newspapers, as an authoritative statement coming from him, a misstatement, would he?

Mr. FORAKER. Mr. President—

Mr. CARTER. I wish to interpolate, to the end that it may not be lost to the record, that the Senator from Montana has made no assertion in reference to the occurrence in Texas.

Mr. TILLMAN. I understand that what the Senator is alleging—

Mr. CARTER. The Senator stated that it was alleged in current reports. Beyond that the Senator from Montana asserted nothing.

Mr. TILLMAN. The Secretary of War alleges, or the newspapers allege that he alleges, that certain soldiers, ten or twenty, did shoot up the town of Brownsville, and the facts in regard to that transaction are what the Senator from Ohio is trying to get, and I hope the Senate will help him to get them.

Mr. FORAKER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from Ohio?

Mr. CARTER. I yield.

Mr. FORAKER. Just a moment, if the Senator will allow me. I also read in the morning papers what was reported to have been written by the Secretary of War, and I noticed the un-

qualified statement of the guilt of these men made by the Secretary of War, and it was because I noted that that I was more particular to interrupt the Senator from Montana than I otherwise would have been.

The Secretary of War, as I understand, does not pretend to have any information on this subject except only what is given in a pamphlet which has been printed by the War Department, setting forth all the testimony that has been taken in regard to this trouble, and setting forth also the reports of the several inspectors who have been there to investigate that trouble. This is what the Secretary of War had before him—

Mr. TILLMAN rose.

Mr. FORAKER. Only a line, if the Senator from South Carolina will allow me.

Mr. TILLMAN. I merely want to ask the Senator where he got the copy of that document. I have been trying to get something bearing on this subject.

Mr. FORAKER. I saw in the newspapers that the War Department had printed this document, and I sent there and asked if I might be favored with a copy, and they favored me. I have no doubt the Department will give the Senator one.

Mr. GALLINGER. One was sent to everybody.

Mr. LODGE. One was sent to every Senator.

Mr. TILLMAN. Mine has not come. I should like to have the Senator from Massachusetts give me his, if he has a copy of it.

Mr. FORAKER. Major Blocksom is the first inspector sent to Brownsville and the only one who went to Brownsville, and after he had been there and had carefully gone over the whole situation, and after he had examined all the witnesses and had inquired among the troops he saw fit to call upon, and after he had familiarized himself with the testimony taken by the citizens' committee, he wrote his report, in which occurs this statement:

The officers appeared to be trying to find the criminals, but it is certainly unfortunate for the reputation of the battalion that they have as yet hardly discovered a single clue to such a terrible preconcerted crime committed by so many men.

Then on the 28th day of August, after he had completed his investigation and after the command had left there for El Reno, he reported to the War Department, to the Chief of Staff, saying, among other things:

Almost no evidence against men arrested, though believe majority more or less guilty, etc.

Mr. CARTER. Mr. President—

Mr. FORAKER. If the Senator will bear with me for just a moment, running all through not only this report, but each of the other reports, is the same uncertainty as to the guilt, the same confession that there is no satisfactory evidence; and I do not hesitate to say that this evidence, on which is predicated the claim that these men are guilty of committing this crime, is the most incomplete, the most unsatisfactory, the most flimsy in character on which a conviction was ever rested to my knowledge. So, instead of saying there is against these men testimony which shows their guilt without doubt, just the opposite is true.

In addition to the character of this testimony, which is so unsatisfactory, is the contradictory testimony, negating these charges, given by the noncommissioned officers who had charge of quarters, and who had charge of the guns, and who were in a situation to know what the truth was. I understand it will be no trouble to show that these are all men of good reputation for truth and veracity, who have the confidence, as the positions they hold indicate they have, of the officers who put them in those positions. Now, the testimony of all these men is of necessity entirely excluded by those who say there is no doubt whatever about the guilt.

But, as I say, I do not now desire to discuss this matter. When I get the facts I do want to present to the Senate an analysis of the testimony, to show the character of it, and to show how unsatisfactory and how insufficient it is to warrant the serious finding against these men, and especially the men who are conceded to be innocent and who are being punished under this order.

Mr. CARTER. Mr. President, I think the Senate will agree with me—

Mr. CULBERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from Texas?

Mr. CARTER. I should like to make an observation just at this point, and then I shall be glad to yield.

The VICE-PRESIDENT. The Senator from Montana declines to yield.

Mr. CARTER. Mr. President, the Senator from Ohio challenged my statement that it was alleged that some disturbance occurred in the State of Texas with which troops of the United States were connected.

Mr. FORAKER. No; "responsible."

Mr. CARTER. I submit to the Senate that the Senator from Ohio has amply justified by his statement the fact that allegations were made and issues framed to which he very eloquently addresses himself.

I now yield to the Senator from Texas.

Mr. CULBERSON. Mr. President, by the courtesy of the Senator from Montana I desire to state that I agree with the Senator from Ohio that this is not the time to discuss the testimony. But I can not permit his observation to pass unchallenged that there is practically no testimony as to the guilt of these soldiers on the 13th of August at Brownsville.

Mr. FORAKER. If the Senator from Texas will pardon me, I did not say there was no testimony or practically no testimony.

Mr. CULBERSON. The Senator from Ohio said the weight of the testimony was to the contrary.

Mr. FORAKER. I said the testimony was insufficient, and that the weight of the testimony, if colored men are to be believed at all, is to the contrary.

Mr. CULBERSON. Occupying but a moment more of the time of the Senator from Montana, I desire to call attention to the fact that the Senator from Ohio omitted, doubtless inadvertently, to read fully from the report before him. I desire to read a paragraph from the report of the commanding officer at Fort Brown upon the subject, which the Senator no doubt has seen. I read from a telegram, dated August 15, to The Military Secretary, and signed C. W. Penrose, Major, Twenty-fifth Infantry, Commanding. The Senator from Ohio will find it at the bottom of page 12 of this pamphlet:

Were it not for the damaging evidence of the empty shells and used clips I should be of the firm belief that none of my men was in any way connected with the crime.

* That was based, Mr. President, upon their statement merely that they were not. Now, what does the major add to that?

But with this fact so painfully before me I am not only convinced it was perpetrated by men of this command, but that it was carefully planned beforehand. I have the affidavits from three noncommissioned officers who were in charge of quarters on the day and night, and they swear positively the rifles were verified and the racks locked after drill (practice march of Companies B and D, drill of Company C), and the old guard returned to the quarters; that they never left the quarters, and that the keys to the locks of the racks were never out of their possession, and that the racks were not opened until call to arms sounded, and were then opened by them.

From testimony gathered by the citizens' committee and given to me by Doctor Combe, I believe from seven to ten men were implicated in this matter. Some one of them must have had a key to the gun rack, and after check roll call was taken—for all were reported present at 11 p. m. roll call—they slipped out of quarters, did the shooting, returned while the companies were forming, and at some time during the early hours of the morning cleaned their rifles. This is made possible from the fact that the shooting all occurred within two short blocks of the barracks.

Mr. President, that is all I desire to say for the present, but I ought to have had the indulgence of the Senate while I gave to the Senate and to the country this statement of the commanding officer.

Mr. FORAKER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from Ohio?

Mr. FORAKER. Will the Senator from Montana yield to me for another moment?

Mr. CARTER. Certainly.

Mr. FORAKER. I wish to correct the impression which the Senator from Texas seems to have received from what I said. I did not say, as I understood him to repeat I had said, that there was no testimony. I said it was unsatisfactory, incomplete, and of a flimsy character, using some such expressions as those; and that I reiterate. I was not unmindful of the fact, when I made that statement, that Major Penrose, the commanding officer, had made this report. I had read it. But, Mr. President, I was, with that in mind, also remembering what the testimony is in this case and what I shall be able to show to Senators it is in this case when we come to analyze it and discuss it and compare it and point out its consistencies and its inconsistencies. I think Major Penrose, when he wrote that report, was of the opinion that certain of the men had unlocked the gun racks and had taken out the guns and had done this firing, and that that was the only way to account for the "shooting up" of the town; and it may be that that is the truth. I do not pretend to say. But I do say that the weight of testimony, if the colored men who have given their evidence under oath are to be believed, is to the contrary, and I think I can demonstrate that, and I think I can explain, too, why Major Penrose made that kind of a concession in the report he made.

Mr. CARTER. Mr. President, it was no part of my purpose to precipitate at this time a discussion on the merits of this controversy, with only limited information in the possession of

the Senate. The purpose of the resolution of the Senator from Pennsylvania [Mr. PENROSE], supplemented by that of the Senator from Ohio [Mr. FORAKER], is to secure full information concerning those transactions referred to in the respective resolutions. The only question before the Senate, as I understand, is that raised by the Senator from Wisconsin [Mr. SPOONER] concerning the manner of addressing the President of the United States in the resolution upon which we are about to vote. He objects to the words "if compatible with the public interest," thus leaving it, according to the phraseology, respectfully subject to the judgment of the President as to whether the information shall be given in whole or in part.

Now, the Senator from Wisconsin proceeds to say that this would be an entirely proper address to the President of the United States if we were engaged in actual war. This resolution refers to the management of the Army of the United States by its Commander in Chief, the President of the United States, and I suggest to the Senator that the form of address which would be proper in time of war can not be improper in time of peace.

The Senator upon reflection will realize—and I again approach dangerous ground—that it is alleged that in this case, in the transaction complained of, certain citizens of the State of Texas were murdered, and that the Army of the United States was in some manner, directly or indirectly, concerned in that murder. I submit to the Senator from Wisconsin that it is not improbable, under such circumstances, that the Department of Justice has been in correspondence with officials of the State of Texas with reference to the subject-matter of this alleged murder of citizens of that State. This resolution, if addressed to the President containing no limitation as to that discretion, or suggestion of it, would not only call upon the President to send to the Senate all the correspondence emanating from the War Department and the officers of the United States Army, but likewise all the information contained in the correspondence of the Department of Justice with officials of the State of Texas.

Now, it must be obvious, I think—along the line of reasoning suggested by the Senator—that it would be highly improper for us to ask the Department of Justice to convey to us information, which would thus become public, concerning a public transaction; that it would be highly improper to ask the President of the United States unqualifiedly to transmit to the Senate correspondence with officials of the State of Texas which involves or may involve the possible criminality of a soldier of the United States under the laws of that State. So, according to the reasoning of the Senator himself, I think it is quite obvious that the phraseology of the Senator from Pennsylvania in respectfully suggesting to the President that he may transmit this information, if, in his judgment, it is not incompatible with the public interest, is eminently appropriate in this particular case. I think the Senator from Pennsylvania weighed his words well and considered the situation fully when he framed the language of that resolution, which is in conformity, as I understand, with an ancient and almost unvarying line of precedents emanating from this body.

Mr. PENROSE. Mr. President, I have as high an opinion of the legal attainments and knowledge of precedents possessed by the Senator from Wisconsin [Mr. SPOONER] as has any member of this body, and I do not yield to him in any degree in my jealous regard for the prerogatives and privileges of the Senatorial office. But in the contention he makes in this matter I can not see that he has the slightest foundation in the line of precedents. The Senator from Massachusetts [Mr. LODGE] has referred to several of them. I have one here:

Mr. TELLER submitted the following resolution:
JANUARY 16, 1906.

Resolved, That the President be requested to furnish the Senate, if not incompatible with the best interests of the service, the petition and accompanying papers of certain officers of the Army, veterans of the civil war, retired from active service for disability contracted in the line of duty, and who have not yet received the benefits of the act of April 23, 1904.

A purely routine departmental matter, having no relation to the high constitutional and international relations referred to by the Senator from Wisconsin. On January 31 the President, in response to the Senate resolution, sent to this body a message of many pages, being Senate Document 179.

On May 28, 1906, Mr. NELSON submitted the following resolution:

Resolved, That the President is hereby requested, if not incompatible with the public interests, to transmit to the Senate the reports of the Keep Commission on Department methods, relating to official crop statistics and the investigation of the Twelfth Census report on agriculture.

In response to that resolution, which was passed by the Senate, the President sent a message, known as "Document No. 464," relating to a matter possessing none of those high qualifications—constitutional and international—referred to by the

Senator from Wisconsin. I have here a number of other resolutions, but I will not take up the time of the Senate by more than referring to them.

The pending resolution was not hastily prepared by me, but was prepared after having examined a very large number of precedents in the Senate, and the phraseology is identical with those precedents. If the resolution differs from its predecessors, it is only in the element of its greater brevity and simplicity.

It occurred to me that the President, being the Commander in Chief of the Army of the United States, having assumed before the country sole responsibility for this act, having in the public mind, perhaps, incurred some disagreement with his own Secretary of War upon the subject, was the proper person and the only person to whom this body should submit a resolution requesting information; that it would be discourteous to him to go below or beyond him and ask the information from any other person than the one who was primarily responsible and the one who assumed the responsibility before the people of the country.

Mr. President, I introduced the resolution without guile, out of a natural relationship to a large colored constituency in the State of Pennsylvania, whose race prejudice has been aroused and who felt that perhaps an affront had been put upon them. I did not know that I was going to create such a disturbance in the minds of some of my colleagues as was developed when I heard the anguished tones of the Senator from Ohio informing this body that he had a similar resolution which he would like promptly to get before us.

Mr. FORAKER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Pennsylvania yield to the Senator from Ohio?

Mr. FORAKER. I did not catch the adjective which the Senator from Pennsylvania prefixed to my tones.

Mr. PENROSE. I had no political purpose to serve and no one to punish.

Mr. FORAKER. Mr. President—

Mr. PENROSE. I was in a legitimate mental attitude.

Mr. FORAKER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Pennsylvania yield to the Senator from Ohio?

Mr. PENROSE. I will be through in a minute, and then the Senator from Ohio can have the floor.

The VICE-PRESIDENT. The Senator from Pennsylvania declines to yield.

Mr. PENROSE. I was in a perfectly legitimate mental attitude, desiring to seek the truth, a condition of mind to which no reasonable man can object. Nor have I ever known a resolution solely, and in a bona fide spirit, intended for such a purpose to be objected to or delayed or to encounter technical objection or controversy.

I am myself investigating this matter, and if I find that these colored troops have been wronged, if injustice has been perpetrated, I will be as zealous and active as the Senator from Ohio or any other member of this body to see that that injustice is righted. If, on the other hand, grave felonies and misdemeanors and wrongs have been committed and the action of the Department is right, I will be found supporting the action of the Department. At the present time my only interest is to see that this matter is thoroughly cleared up, and that the great colored constituency of Pennsylvania will feel that there is no mystery or obscurity surrounding the subject, and that no injustice has been perpetrated upon their race.

Mr. FORAKER. Mr. President, I understood the Senator from Pennsylvania [Mr. PENROSE] to say that I had offered my resolution in angry tones.

Several SENATORS. Anguished.

Mr. FORAKER. What is it?

Mr. PENROSE. I referred more to a condition of anguish than of anger.

Mr. FORAKER. Oh, anguished. Mr. President, I was not aware that my tones indicated either anger or anguish. They certainly did not indicate either. I, in common with everybody else, I think, was taken by surprise when the Senator from Pennsylvania, violating all precedents, offered his resolution. I happened to have in my pocket the resolution which I had dictated to my stenographer, and which he had furnished to me, but which I had not had opportunity to look over, and not understanding and not liking the kind of resolution offered by the Senator from Pennsylvania, I offered mine as a substitute, and asked that it might go over until another day, when it could be properly considered. I have no purpose in view except only what the Senator from Pennsylvania says he has in view, to get the facts in order that the whole subject may be intelligently considered and acted upon here in the Senate, as I think it will have to be.

But, Mr. President, what I rose to say more particularly

than that is that I did not offer the resolution because it involved the race question. It is not necessary to consider that question at all, and I do not desire to consider that question, and have no thought to consider that question. In my opinion, it is a much broader and a much more serious and a much more important question than that. It is a question which concerns white men as well as colored men. It is a question which concerns the Army itself. What avail is it that the Congress may raise armies if, as fast as they are raised, the President may, if he sees fit to do so, disband them? If the President may disband one company he may disband three, as he has done here, and if he may discharge a whole battalion, he can do away with a regiment if he so likes, and if he can do away with a regiment, a brigade, and, as I say, the whole Army.

But that is not the most important question either, Mr. President, for I do not apprehend that any President would do anything like that. I believe it will be easy to show that no President has power to do any such thing and that no President would have disposition to do any such thing. The broader question is one of constitutional right. The President does have power, as the Secretary of War says in the statement published in the papers this morning, to grant discharges without honor in contradistinction to discharges that are dishonorable and to discharges that are honorable. But running through all authority, and necessarily so because of the spirit of our institutions as well as the letter of the law, is this rule, that no such discharge can be granted by any order, from the President down, when it rests upon a conviction of a felony punishable with imprisonment in the penitentiary under the laws of the United States and when as a result of such discharge punishment is inflicted as though it had been in pursuance of the sentence of a court-martial.

Whenever it comes to the point where men are charged with the commission of a criminal act they are entitled to a trial before they are condemned, and they have that right, although they may be enlisted men in the Army of the United States. They have it under our constitutional guaranties, and they have it according to the letter of the statute that is applicable. I shall point out, when the proper time comes, that the Congress of the United States has been careful, in enacting the Articles of War and other statutes for the government and regulation of the Army, to provide that there shall be no conviction of any enlisted man of any offense upon which a discharge can be predicated until he has had a trial before a court-martial or some other duly constituted tribunal.

Mr. WARREN. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Wyoming?

Mr. FORAKER. I yield.

Mr. WARREN. I assume, of course, that the Senator from Ohio realizes the fact that the President of the United States has power to reduce or increase the Army within certain limits, and that he has heretofore exercised it, decreasing it very materially?

Mr. FORAKER. Yes; and there arises another question, which I did not intend to address myself to now. The President has the right and the power under the law which we have enacted to increase the Army not beyond a named maximum and to decrease it not below a named minimum. If he undertake to decrease the Army below the minimum by discharging a battalion, if it have that result, his act for that reason would be unlawful.

But, Mr. President, I do not stand upon any mere statutory provision of that kind. I stand upon the broad proposition that no man in this country can be convicted of crime until he has had a right to be heard.

Now, how stands the case with these men? I have called attention to the fact in the remarks made a few minutes ago that these enlisted men and their officers, who were in charge of guns and quarters, have all testified under oath. If their testimony be true, no crime has been committed by any of these men, and it is only upon the theory that they have also committed perjury that the conclusion was reached upon which this action has been taken.

So these men are guilty, some of them of murder, if the case upon which the President has acted be established; others from the knowledge of that murder have been guilty of misprision of felony in refusing to tell about it, and others of them still, nearly all of them, have committed perjury in saying they had no knowledge of it. They can therefore be tried for three crimes, all of them involving moral turpitude and all of them involving punishment in the penitentiary.

Is it possible, Mr. President, that by an Executive order men can be so convicted and punished?

But look, if you will bear with me a moment, to the result of this order. The resolution I have offered points out—and I had that in my mind—that we have a statute which provides that when a man has served for thirty years faithfully and honorably he shall have a right to retire on three-quarters pay with a monthly allowance of \$9 for clothing and subsistence. That can not be allowed to the man who is discharged without honor. It is only allowed to the man who is honorably discharged. I do not know how many men there are, but quite a number, I know, from the testimony which has been given, of those who have been discharged who would soon be entitled to be so retired. That is an important right. All retained pay is forfeited; so, too, their right to pensions.

Others have served more than twenty years and are entitled to membership in the Soldiers' Homes of the country. They lose that right. All of them, if honorably discharged, will be entitled to honorable burial, without cost to them, in national cemeteries. They lose that right. All this is not important, perhaps, to the Senator from Pennsylvania, but it is important to the men who have served so long and so faithfully to acquire these rights.

So I might go on enumerating other rights.

Mr. PENROSE. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Pennsylvania?

Mr. FORAKER. I will be through in a little bit, and the Senator can then take the floor and deal in questions of anguish or anger, as he may see fit.

So it is, Mr. President, that this broadens out, as I say, into a case where men are sent forth branded as criminals, threefold criminals—men who have committed murder or who have suppressed the knowledge of murder, although called upon by the legal authorities to give that knowledge, and men who have committed perjury. They are branded with all these crimes, and as a result of it they are stripped not only of honors, but also of property rights.

Now, I say, without any statutory provision on the subject, the Constitution itself protects them. No man can be deprived of life, liberty, or property without due process of law. Due process of law means in accordance with the law of the land. The law of the land says when a man is charged, although an enlisted man in the service of the United States, with the commission of an offense of that character he shall have a right to trial before a court-martial and the sentence shall be such as the court-martial may direct. That is the law of the case.

It was from considerations of that kind, without any desire, Mr. President, to make it a color question, without any desire to introduce into the discussion of the subject any of the race prejudice that we see so much of to our great regret here and there, evinced throughout the country, without any desire to find any fault with any body, but only that we might protect broad principles and protect men who are entitled to our protection in the enjoyment of their acquired rights that I introduced this resolution and specified the facts I want to obtain.

Mr. SCOTT. Will the Senator from Ohio allow me to ask him a question?

Mr. FORAKER. Certainly.

Mr. SCOTT. May I ask whether any of the white officers who had charge of these three companies were dismissed in the order?

Mr. FORAKER. No, Mr. President, no white officer is discharged. No white officer is really criticised. There is a sort of criticism made by Major Blocksom, the first inspector, as to one of the officers, but that he practically answers and says he does not insist upon it. They go clearly acquit. I think, Mr. President, they are entitled to go acquit until there is some evidence produced that somebody did the thing these men are charged with having done.

Now, the Senator talks about this testimony. There is a great deal of it I might read at length, but if Senators will bear with me a moment I will read just two or three samples. Here is the kind of testimony sent to the War Department, and which along with other testimony forms the predicate of this case of crime.

Mr. F. M. McCampbell's testimony:

I was on my way to the house on the night of the 13th, when we met some soldiers, and they turned the guns on us and asked us, "What are you sons of bitches hunting for?" I think it was a whole company. I did not see any white officer with them. I just saw the ranks of the soldiers. They went in the direction of town, and "We care very little if we shoot you full of holes," they said. Mr. Fielder was going to the hotel. I did not see any firing. I don't think there was a commissioned officer with the soldiers. That's all, about, I know. This happened right about behind the market. There must have been about fifty or sixty men in the company. Mr. Fielder was with me going to the Rio Grande Hotel at that time. That's all.

The testimony shows, and there is no dispute upon that point, that after the firing was over the commanding officer sent one of

the companies, consisting of fifty-two men, to patrol the town, and those are the soliders this man saw. Yet that is paraded as evidence that the soliders did this shooting.

Mr. M. G. Dalling's testimony:

I am a State ranger. I have come into the possession of some information this morning, which I got from this soda-water man who sells soda water. He told me that this soda-water man had been told by a saloon man, who keeps a saloon in the edge of town, that some shooting had been done last night, and that Company C could have taken the whole town if they had wanted to, and that they could take the whole damn State.

Mr. G. W. H. Rucker's testimony:

About Monday night last, about half past 8 o'clock, I took two cases of soda water to saloon near edge of town. There were about thirty or forty negroes inside gambling, as near as I can ascertain about the crowd, and I heard three or four negroes making threats that they would die and go to heaven before they would go back into post, but do not know what the conversation was about. Yes; I know if I would see this soldier again I would recognize him. I could pick him out of a crowd. He was a soldier. Yesterday morning I passed this negro saloon, but nobody was there. At about 12 o'clock, it must have been, as I was picking up empty cases, I went to this saloon, and the proprietor told me that he did not need any "pop," as the boys had been having a little trouble with the citizens and they were all in the post. He is working for two soldiers who are in the post, who own the saloon. He said that if a gun had been fired last night that Company C could have come out without any orders, and would run every man out of town; that Company C could whip the whole State of Texas.

And so on for quantity. Now, here is the testimony of Mr. J. P. McDonald. Here is a right intelligent witness, but he contradicts in one respect the testimony of every man on whose testimony this finding is based. Mr. J. P. McDonald testified:

Question. We are here to get what information we can that will throw light on the circumstance.—Answer. I board on the little block next the garrison, about the middle. I knew there was bitter feeling in town and thought that if they caught any negro soldiers up town they might do them up. So I laid awake; never pulled off my shoes. When the first fire started I jumped up. There were from six to ten shots on Elizabeth street; then they ceased.

There is the testimony of a citizen of Brownsville, who laid awake because he was expecting trouble, and being awake and listening for them, he heard the first shots, and he has a right to testify intelligently upon that point. He tells us where the firing commenced—down on Elizabeth street. Other witnesses claim to have seen colored soldiers and that the firing commenced at the quarters inside the wall surrounding the post.

I might go on at great length, but I think I have gone far enough to show the general character of this testimony. Then, after this testimony there is testimony here that will be given proper attention at the proper time, of people who say what they saw; but, as I said, when I take it up to analyze it I will have something to say about that testimony which I do not want to say now.

Mr. CULBERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Texas?

Mr. FORAKER. I yield for a moment.

Mr. CULBERSON. The Senator from Ohio in reading the testimony of this man McDonald undertakes to create the impression—in fact, I believe he makes a direct statement, which contradicts the other witnesses—by saying that the first shots were fired on Elizabeth street. The Senator is mistaken in that. He has misconstrued the testimony. The man said:

When the first fire started I jumped up. There were from six to ten shots on Elizabeth street; then they ceased.

Mr. FORAKER. I stand corrected, then. I was not aware that any witness had so testified.

Mr. CULBERSON. It is the same witness the Senator read from a moment ago.

Mr. FORAKER. What witness?

Mr. CULBERSON. McDonald.

Mr. FORAKER. Where does he say that?

Mr. CULBERSON. On page 29.

Mr. FORAKER. That is the same thing I stated.

Mr. CULBERSON. Precisely; but the Senator stated and he undertook to make the impression that this witness said the first shots fired were on Elizabeth street. He only states that from six to ten shots on that street were fired.

Mr. FORAKER. That is what I said. He said the firing commenced on Elizabeth street.

Mr. CULBERSON. That is a mistake. The Senator misreads the testimony of the witness. He says he was lying down when the first firing was heard. Then he adds that "there were from six to ten shots fired on Elizabeth street; then they ceased." Those were the last shots fired, Mr. President, and not the first.

Mr. FORAKER. Now, Mr. President, let us see if they were the last. The witness proceeds:

When the first fire started I jumped up. There were from six to ten shots on Elizabeth street; then they ceased. I went down the

street to the next block and on to the alley and stopped on the corner. The shooting commenced again just inside the garrison wall.

So it was not the last. I may be in error about the effect I attach to the witness's statement, but I just happened to have my eye fall upon it as I was looking through the record, and, remembering what he had said, I thought that it would answer for an illustration as well as anything else.

But I would call the attention of the Senator at the proper time to the fact that this testimony is full of conflicts of that character, so full of conflicts that it is absolutely unreliable standing by itself, and I do not believe any jury in Christendom, unbiased, impartial, would find on such a state of evidence anybody guilty of the commission of any serious offense. When I say I do not believe a jury would find them guilty I mean in view of the weight that should be attached to testimony that is in conflict with that given by the troops themselves. They testify in such a way that it would be impossible for any man in that command to have done this shooting.

But about that I do not wish to be understood as taking any positive position. I am only pointing out that there is grave conflict in this testimony, and that no man who is careful as to what he says has a right to say, in view of this state of evidence, that there is no doubt whatever as to the guilt of these men. There is doubt about it—serious doubt. I commenced the reading of it under the impression that there was no doubt. I took that as granted. I supposed, as a matter of course, from what I had seen in the papers and what I had seen of the action which had been taken, that upon satisfactory testimony it had been established that there was that guilt. But when I got through with the testimony, starting in with a perfectly open mind, I came out with grave doubt about it. Now, I want all the facts I can get, for it is a serious, broad, far-reaching matter. When we have all the facts my resolution calls for, we can consider the matter intelligently.

Mr. TELLER. Mr. President, it is quite apparent that we can not intelligently discuss this question, not having the information we ought to have. It seems to me the only question is how we shall get the proper information. I understand the objection made by the Senator from Wisconsin [Mr. SPOONER] was practically the question of order, whether the resolution of the Senator from Pennsylvania [Mr. PENROSE] was in order or not. I think he will probably not insist upon that.

The resolution of the Senator from Ohio [Mr. FORAKER] calls for more than the resolution of the Senator from Pennsylvania. It calls for specific information upon the part of the Secretary of War and it calls for the form of the dismissal. I do not know whether any Senators have seen it. I know I have not, and I am not aware what it is. I believe we will get more information directly from the Secretary than from the President, unless the President sees fit to refer the whole matter to the Secretary.

Mr. President, this is a subject that is being pretty actively discussed. I have on my table here now a resolution from a very respectable meeting of colored people in Colorado. Some of them I know to be very respectable people. They are greatly excited, because they are going upon the theory that the President has done something to these people because they were colored. I do not myself suppose that there is anything in that at all.

These colored soldiers were charged with a grave offense. If they had been white men and had been guilty of what is charged they were guilty of, the President would have been certainly justified in proceeding as far as his constitutional authority would allow him to proceed. I do not know myself whether he has proceeded beyond that point or not. I know it is asserted in some circles by some people that he has gone beyond it. That is a matter which I think we could discuss better after we have the form of the discharge and have had an opportunity to look into all the conditions and study the statutes upon this subject.

It seems to me, Mr. President, that the thing to do is to get a report of all the facts and send them to some proper committee, which will be, I suppose, the Committee on Military Affairs as a matter of course. I do not believe that you will ever come to any proper conclusion about it except by some such tribunal as that.

I wish the Senator from Pennsylvania would withdraw his resolution and allow the resolution of the Senator from Ohio to pass, and dispose of this question in what I think would be a satisfactory way to everybody. If the Senator insists upon it, I do not know that we can pass both resolutions. I do not think it would be exactly courteous to ask the President for one thing and the Secretary of War for another.

Mr. PENROSE. Mr. President—

The VICE-PRESIDENT. Does the Senator from Colorado yield to the Senator from Pennsylvania?

Mr. TELLER. I yield.

Mr. PENROSE. I understand the friends of both resolutions are satisfied with the arrangement suggested, that both resolutions be passed.

Mr. TELLER. Very well; I have no further remarks to make on the subject.

Mr. SPOONER. Mr. President, I desire to submit a few observations.

I agree entirely with the Senator from Colorado [Mr. TELLER] that this discussion of the merits of the question is entirely premature. For one I intend to withhold any discussion of it until the incoming of a report which puts the Senate officially in possession of all the facts in relation to it.

The Senator from Colorado is mistaken in supposing that I made any point of order against the resolution offered by the Senator from Pennsylvania. I did not. I objected to the form of the resolution—that is, I objected to a resolution addressed to the President as unusual. I still adhere, Mr. President, to that objection as a matter of proper practice, although there is nothing in the Constitution to prohibit it, nothing in the rules of the Senate to prohibit it. It is entirely competent for the Senate to pass it.

Mr. PENROSE. Mr. President—

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Pennsylvania?

Mr. SPOONER. Certainly.

Mr. PENROSE. I should like to ask the Senator on that point whether he contradicts the statement made by me and the Senator from Massachusetts [Mr. LODGE] that there are numerous precedents of the Senate justifying this course. His present objection is purely theoretical and critical of a bad practice in the past as much as in the present.

Mr. SPOONER. I will get to that. Mr. President, I have not examined the precedents. I speak from my recollection as to the almost uniform practice of the Senate during a period of nearly sixteen years in which I have been a member of the body. It appears that resolutions addressed to the President have been introduced and passed—one offered by the Senator from Colorado [Mr. TELLER]. I rather think it must have been inadvertently done, because it was not a subject upon which, so far as I recollect the scope of the resolution, there could have been any possibility of the Executive withholding information from the Senate. The general practice of the Senate has been—and it is a good practice, an almost universal practice, except in those cases where the nature of the subject is such as to warrant the belief that all of the information may not properly and safely be communicated to either House of Congress—not to address the resolution of inquiry to the President, but to address it to the Secretary of the appropriate Department, making it a direction instead of a request.

The precedent cited by the Senator from Massachusetts relative to a request upon the President for a copy of the report of the Keep Commission does not fall at all within the exception. The Keep Commission was not a commission authorized by law. It was a commission appointed by the President composed of officials selected from the various Departments to investigate the methods of the Executive Departments of the Government and to report to the President for his information, as I recollect it.

Mr. CARTER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Montana?

Mr. SPOONER. Certainly.

Mr. CARTER. I should like to ask the Senator from Wisconsin if that portion of the resolution should be amended, thus calling upon the President for all the correspondence and all the facts, whether he would deem it proper to call upon the President, without qualification, to communicate to the Senate, and therefore to the public, the correspondence, if any there be, between the Department of Justice and the legally constituted authorities of the State of Texas with reference to the commission of crimes in that State by soldiers of the United States liable to punishment under State law, if such communication would militate against the ends of justice?

Mr. SPOONER. The Senator from Montana has utterly misapprehended my objection to this resolution. He insists that my objection is because of the presence in it of the words "if not incompatible with the public interests." He is quite mistaken. I know quite well that propriety demands that when a request for information is addressed to the President—and that is why I think such requests are limited, and has been in general practice, to the cases which I indicated when I first spoke—it is always qualified, so far as I recollect, by these words. My

preference for the resolution of the Senator from Ohio is because, being a request for detailed information, our right to which is beyond question, it is addressed to the Secretary of War, and contains no evidence that the Senate doubts its right to the information.

I do not take it to be open to debate, Mr. President, that the Senate has a right to obtain from the War Department copies of discharges, records of courts-martial—everything relating to the domestic administration of the Army not connected with plans of campaign or of war.

Mr. CARTER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Montana?

Mr. SPOONER. I do.

Mr. CARTER. Then I wish to state that I clearly and distinctly understood the Senator from Wisconsin to object to the words "if not incompatible with the public interests" in this form of resolution.

Mr. SPOONER. Mr. President, I objected to the resolution because it requires those words and implies in the resolution itself a doubt upon the part of the Senate whether or not this information might be properly withheld from the Senate. That is my objection.

Mr. CARTER. The objection of the Senator was to the addressing of any resolution to the President on the subject.

Mr. SPOONER. For that reason. The almost universal rule of the Senate has been to address no inquiries to the President of the United States without those words; I remember no exception, where the nature of the subject of inquiry was such as to make it perfectly apparent that the Senate or the House was entitled of right to all the information covered by it, the direction, not the request, has been made as an almost universal rule upon the appropriate Cabinet officer, instead of by resolution of inquiry addressed to the President.

I said there were some exceptions, and there are. Foreign relations constitute one exception; the movement or plan of campaign of the Army or the Navy in time of war constitutes another, because even a child would know that the Commander in Chief, under our Constitution, must have the discretion in order to insure the safety of the Republic and the success of our arms, to exercise discretion and to withhold, if his judgment so dictates, information which would endanger the public interest if it were given to the public. The Senator from Montana, with a logic the like of which I have never known him to indulge in before, seemed to think that there is no distinction, and can be none, between the information which the Senate or the House is entitled to have in relation to the Army in time of war and in time of peace.

It does not at all follow, Mr. President, because certain inquiries as to the Army must be in time of war addressed to the President, and he have discretion to withhold or to transmit information, that in time of peace, upon every imaginable subject connected with the administration of the Army, it is proper, or comports with the dignity of the Senate or of the other House as legislative bodies in all cases to address inquiries to the President, qualified as courtesy requires such inquiries to be.

Mr. CARTER. Now, Mr. President—

Mr. SPOONER. I want to get through.

Mr. CARTER. I wish to address the Senator a question at that point.

Mr. SPOONER. Very well.

Mr. CARTER. It is well known that we are expending very large sums of money on our coast defenses.

Mr. SPOONER. Certainly.

Mr. CARTER. I will ask the Senator if he thinks in time of peace it is proper for the legislative department of the Government to make public all the plans of defense that are being prepared in case of war by calling on the Secretary of War or the President to disclose such information?

Mr. SPOONER. The Senator gets back to my path—that is, that the question is to be resolved with reference to the subject-matter. I admitted it, and I admit it now. I must admit that there are numerous cases in which absolute direction upon one of the Departments or upon a Cabinet officer is subject of right, I mean, to a declination by order of the President to that officer to afford the information. But that argues nothing upon a subject like this or upon the subject generally embodied in the resolution of inquiry by the Senate and by the House. We could not call upon the Attorney-General to send to the Senate copies of papers which he has acquired through investigation to be used in the trial of a gang of counterfeiters or to be used in the trial of cases prosecuted under the antitrust law for the obvious reason, Mr. President, that it would lead possibly to the defeat of the Government's litigation. You can not put your side of the case into the hands of your opponent.

If an investigation has been made by the Treasury Department with reference to the apprehension of men who are smugglers, Congress could not expect the President to permit the information to be sent to the Senate or the House, and warning thereby be given to those whom the Government seeks to apprehend.

There are many such cases. Is this a case of that kind? Congress, Mr. President, fixes the size of the Army. The Army is the Army of the people of the United States. It is created by act of Congress. The rules for its government are entirely within the jurisdiction of Congress. The grounds upon which men may be discharged is within the constitutional capacity of the Congress. Whether any man can be discharged for offense without a trial is entirely within the constitutional competency of Congress. Whether the President shall be given the right to dismiss an officer at will without trial is for Congress to say. The Army is supported by moneys appropriated by Congress. The manner of the expenditure of those moneys Congress has a right to know. I do not make any doubt whatever, Mr. President, that it is within the constitutional right of the House or of the Senate either, acting in a legislative capacity upon this subject, to direct the Secretary of War to transmit to the Senate or to the House all information within his jurisdiction upon the subject of the discharge of the three colored companies.

Now, Mr. President, the foundations of the Union will not be shaken whichever of these resolutions is adopted, or if both be adopted. I am surprised that the Senator from Wyoming [Mr. WARREN] withdrew his resolution. They all three might have been adopted. The Senator from Pennsylvania thinks it improper that both should be adopted. He offered his resolution in the form which he employed addressed to the President—the form is proper if the resolution is to be addressed to the President at all—because the Senator thought it would not be within the proprieties, it having been the President's act, to address it to his subordinate, the Secretary of War.

I do not stop to discuss the question of propriety; but it is very proper, some Senators think, to pass both of the resolutions. The Senator from Massachusetts [Mr. LODGE] seems to think so; the Senator from Montana [Mr. CARTER] seems to think so.

There never has been, within my knowledge, a President who is more frank with both bodies of Congress than the present Executive. The objection is based upon principle and was made because I believe it is the dignified and proper course for both bodies to pursue as to subjects upon which the House or the Senate is entitled manifestly to the information to make a direction in the usual way upon the appropriate Cabinet officer.

I think it will look rather absurd—I shall not further object to it, Mr. President—to pass the resolution calling upon the President, if not incompatible with the public interests, for full information bearing upon the subject, and also to pass the resolution of the Senator from Ohio, directing the Secretary of War, who has probably received most of these papers from the President, to furnish all information upon the subject on file in the War Department. But that is a matter for the Senate to determine.

Mr. TELLER. Mr. President, I do not wish to prolong this debate, but the Senator from Wisconsin [Mr. SPOONER] seems to think that the resolution which I introduced some time ago must have been inadvertently introduced. I presume the files of this Senate will show a great many resolutions of mine of a similar kind. I want to say to the Senator, as a matter of history, that if he will take the trouble to go into the question of the right of the Senate and of the other House to call upon the Executive for information, he will find that in the early history of the country such requests went directly to the President. If he will take the pains to go back fifty years he will find that it was a common occurrence, and I will venture to say there has not been a President since the days of Washington who has not been called upon by the Senate and the other House for information.

During the exciting times immediately after the civil war, when Andrew Johnson was President of the United States, a great number of such resolutions from the House and the Senate were day after day directed to the President. Sometimes he furnished the information and sometimes he did not. If he did not furnish it, he would say that he did not think it was compatible with the public interests that he should do so. In such cases I believe he always courteously declined.

When we call upon the President for information, we request him; when we call upon the Secretary of War, we direct him. Suppose the Secretary of War fails to reply. Where is the power of the Senate to compel him? He is a subordinate of the President. He is the mouthpiece of the President in many ways. He becomes the mouthpiece of the President because of his special knowledge in regard to certain matters.

You call upon the man who is supposed to know most about the subject concerning which information is desired. If you want to know about public lands or about pensions, you call upon the Secretary of the Interior; but if you want to know about military affairs, you call upon the Secretary of War. There is, however, no way by which you can compel the Secretary of War to reply, unless by impeachment, and we can not institute such proceedings, for, under the Constitution, they must originate in the House of Representatives.

There is nothing unusual in the resolution of the Senator from Pennsylvania. As I said before, the resolution of the Senator from Ohio calls upon the Secretary of War for information that is not in the hands of the President, and therefore I prefer the form of his resolution. At the end of his resolution there is a request for an order issued to Major Penrose. Probably that order is not in the keeping of the President, but is in the keeping of the Secretary of War. It seems to me there is an unnecessary question of propriety raised here. I do not myself want to admit that when the Senate wants information it can not call upon the Executive for it. I do not care whether it is in one Department or another or whether it is solely under the control of the President. You may call upon him for information affecting matters of foreign diplomacy, but he is not obliged to answer; sometimes he would be derelict in duty if he did answer; but it must be fairly presumed that the Senate of the United States will never call upon the President for information which ought not to be given to the country. If he says "I do not consider it compatible with the public interests that I should give it," that is the end of the controversy.

Mr. WARREN. I want to ask the Senator a question before he takes his seat.

The VICE-PRESIDENT. Does the Senator from Colorado yield to the Senator from Wyoming?

Mr. TELLER. Certainly.

Mr. WARREN. The Senator from Colorado has been a distinguished Cabinet officer, and I want to put this question to him: In the present case the President, by the Constitution, is clearly Commander in Chief of the Army—in other words, he is the highest officer of the Army. He bears a relation to the Army and Navy that he does not bear as to other Departments. It seems to me that information regarding this particular case lies not only with the Secretary of War, but undoubtedly with the Department of Justice as well. Therefore I want to ask the Senator from Colorado if, when we make an inquiry of the President, he will not, as a matter of course, call upon the different Departments for such information as he chooses to furnish, whereas if we call upon the Secretary of War alone, he furnishes only that which his Department has? If so, it seems to me in this case—while I am ready to vote for both resolutions—if we are to select one and vote for only one, it should be the one calling upon the President, first, because he has control over both of these Departments that may have evidence; second, he is the Commander in Chief of the Army and its highest authority, and, third, this action concerning the discharge of troops is the action of the President, in the absence from the city at the time of the Secretary of War, and therefore the President is the highest authority to appeal to and the man above all others who is able to furnish us the information we want.

Mr. TELLER. I think the Senator has answered his own question, and I think he is correct about it.

Mr. CULBERSON. Mr. President, on yesterday I offered an amendment to the resolution of the Senator from Ohio [Mr. FORAKER]; which he accepted. Since then that resolution has been detached in a parliamentary sense from the resolution of the Senator from Pennsylvania [Mr. PENROSE], and I do not know which one of these resolutions will be adopted by the Senate. Therefore, I beg to offer the same amendment to the resolution of the Senator from Pennsylvania which I offered yesterday to that of the Senator from Ohio, modified to suit an inquiry addressed to the President of the United States.

The VICE-PRESIDENT. The Senator from Texas proposes an amendment to the resolution of the Senator from Pennsylvania [Mr. PENROSE]; which will be stated by the Secretary.

The SECRETARY. It is proposed to add after the last word of the resolution of Mr. PENROSE the following:

The President is also requested to send to the Senate a copy of the order issued to Maj. C. W. Penrose, Twenty-fifth United States Infantry, directing him not to deliver to the civil authorities of Texas certain men of his command charged with assault to murder and murder, at Brownsville, Tex., August 13, 1906, and referred to by Major Penrose in his letter of August 24, 1906, to Capt. W. J. McDonald, of the Texas rangers.

Mr. PENROSE. I accept the amendment of the Senator from Texas.

The VICE-PRESIDENT. The resolution will be so modified. The question is on agreeing to the resolution proposed by the Senator from Pennsylvania [Mr. PENROSE] as modified.

The resolution as modified was agreed to.

Mr. FORAKER. I understand that resolution No. 181 is also before the Senate.

The VICE-PRESIDENT. It is. The question is on agreeing to the resolution proposed by the Senator from Ohio [Mr. FORAKER].

The resolution was agreed to.

HOUSE BILLS REFERRED.

The following bills were severally read twice by their titles, and referred to the Committee on Finance:

H. R. 8124. An act to amend section 5136 of the Revised Statutes of the United States, permitting national banking associations to make loans on farm lands as security, and limiting the amount of such loans;

H. R. 11273. An act to incorporate the National German-American Alliance; and

H. R. 14587. An act to authorize the Secretary of the Treasury to issue duplicate gold certificates in lieu of ones lost or destroyed.

GAMBLING IN THE TERRITORIES.

Mr. BURNHAM. Mr. President, I expect to be away from the city for a time, and I therefore ask unanimous consent for the present consideration of Order of Business No. 1264.

The VICE-PRESIDENT. The Senator from New Hampshire asks unanimous consent for the present consideration of a bill the title of which will be stated.

The SECRETARY. A bill (H. R. 10853) to prohibit gambling in the Territories.

Mr. TELLER. I should like to inquire what the Senator wants to do with the bill?

Mr. BURNHAM. I desire to have it considered. I will say that when it is taken up I will offer an amendment which, I understand, will remove all the objections which have been made to the bill. The amendment which I intend to propose will lessen the amount of the penalty and, I think, make the bill free from all objections.

Mr. TELLER. Does the Senator expect to put the bill on its passage this evening?

Mr. BURNHAM. It is a bill that has passed the other House in substance, and so I want it passed by the Senate.

Mr. TELLER. I do not know what the bill is, but I think it is an inopportune time to take it up with the expectation of passing it to-night.

Mr. BURNHAM. I want to say that it is a bill in harmony with the law in every State of the Union and in some of the Territories, and I think when the Senator reads it he will find no cause of objection.

Mr. BLACKBURN. Allow me to ask the Senator from New Hampshire if this is what is known as the "antigambling bill?"

Mr. BURNHAM. It is the antigambling bill.

Mr. BLACKBURN. I object to its being considered at this hour of the day, Mr. President.

The VICE-PRESIDENT. Objection being made, the bill will go over.

JAMESTOWN EXPOSITION.

Mr. LODGE. I move that the Senate proceed to the consideration of executive business.

Mr. DANIEL. I hope the Senator will allow me to offer morning business.

Mr. LODGE. I will temporarily withdraw the motion and yield to the Senator.

[Mr. DANIEL thereupon introduced two bills, which will be found under the appropriate heading.]

Mr. DANIEL. In connection with the second bill, I present a statement which I ask may be printed in the RECORD.

The VICE-PRESIDENT. In the absence of objection, it will be so ordered.

The statement referred to is as follows:

STATEMENT AS TO THE TRICENTENNIAL JAMESTOWN CELEBRATION.

At the time of the inauguration of the proposed tricentennial celebration it had the earnest indorsement of the President and many of our leading men who are familiar with American history who were in sympathy with the idea of celebrating in the unique manner proposed the greatest event in American history, second only to the discovery by Columbus. The idea was new to many in this country, and there was some doubt in the minds of some men in Congress, as well as in those outside, as to the magnitude which the celebration would assume.

The capital that was subscribed and the appropriations that were made were thought to be in keeping with the probable demands of the occasion. Since then, however, as the information has spread throughout the country and the proclamation of the President has been transmitted to foreign countries, there has been a general appreciation of the importance of the event and the great opportunity it presents not only for an historical celebration, a great naval and military gathering,

but also the opportunity for bringing together the representatives of the various States of the Union at the place of its birth for social intercourse and the exchange of courtesies, but also for the exhibition of the products of the various States and for a collective gathering of objects of historical interest.

ACCEPTANCE OF INVITATION BY MANY NATIONS.

About nearly all of the leading nations of the world have accepted this Government's invitation to be represented by their ships and detachments of their soldiers, prominent among which are the following: Great Britain, France, Germany, Spain, Italy, Japan, Russia, Belgium, Switzerland, Venezuela, Denmark, Sweden, and others.

PARTICIPATION OF THE STATES.

About twenty of the States have taken legislative action for the appointment of commissions for erection of State buildings and the exhibit of their products at the exposition and about ten more now have the matter under consideration, to be consummated in the sessions of their legislatures.

Among those who have provided for buildings at the exposition are the following:

Massachusetts building now in course of construction; Connecticut building is nearly completed, and also Rhode Island building; Vermont, which, it is believed, has never voted money for its participation at any exposition, has just appropriated \$10,000 for a building at the Jamestown Exposition. Maine has appointed a commission with authority to erect a building from funds to be subscribed by its citizens. Negotiations are now pending with New Hampshire, with good prospect of her participation, she being the only remaining one of the original thirteen States to fall into line.

Pennsylvania has erected a replica of Independence Hall, and it is now nearly ready for occupancy on the grounds.

New York has contracted for the erection of a very handsome building over 200 feet in length.

The New Jersey building, which is completed, is a reproduction of General Washington's headquarters at Morristown.

The governor of Delaware has visited the exposition grounds, selected a site, had prepared a plan for a building, and a strong movement has been inaugurated for the necessary appropriation from the legislature which is about to assemble.

The Maryland building is practically completed for use, and also those for Virginia, Missouri, Ohio, and South Dakota.

The Ohio building is a reproduction of "Adena," the home of the first governor.

North Carolina, South Carolina, Georgia, and Louisiana have all appointed commissioners and made necessary appropriations for buildings and exhibits.

Florida has appointed a commission to erect a building and prepare an exhibit which is to be paid for by private subscriptions, which are now being made.

In West Virginia, pending the assembling of the legislature, the governor has appointed a very able commission, who have selected a site and are now about to begin the erection of a building, the cost of which is guaranteed by ex-Senator Henry G. Davis, pending an appropriation from the legislature.

In Kentucky a popular subscription is being made for \$40,000 with which to reproduce the fort of Daniel Boone, and in it to make an exhibit of her resources.

The States of Oregon, Montana, and Washington have selected the site for a building, which it is expected the three States will unite in building for the exhibit of their resources.

Advices lately received from the governor of California indicate that his State will, when the legislature assembles in January, make suitable provision for representation.

Wisconsin and Michigan have appointed commissions with instructions to select sites and report the amount requisite for the representation of their respective States for consideration at the sessions of their legislature in January.

Several of the remaining States have the matter now under consideration and are expected to act at their January sessions, and several of those States which made appropriations in the early stages of preparations have bills prepared to increase their appropriations. Prominent among these are the States of Rhode Island, North Carolina, Illinois, and New York.

PARTICIPATION OF PATRIOTIC, FRATERNAL, AND OTHER ORGANIZATIONS.

Outside of the legislative action of the States there has been a widespread interest among the patriotic and fraternal organizations of the country, several of which have not only decided to hold their annual conventions at the exposition in 1907, but are erecting buildings on the grounds. The Daughters of the Revolution are among them. The Pocahontas Memorial Association and the Society of Virginia Antiquities are interesting themselves actively.

Among these also are the Travelers' Protective Association, composed of the traveling salesmen of this country; and one of the strongest and most progressive orders in the country, the Modern Woodmen of the World, an organization which has a membership in the United States of over half a million; the Eagles, a beneficial organization with a very large membership which assembles in its national annual convention with twenty to thirty thousand people.

Among the religious organizations which are to meet at the exposition next year one of the strongest numerically is the "Disciples of Christ," which organization has selected a site and has decided to build on the exposition grounds.

CONVENTIONS TO BE HELD AT THE EXPOSITION.

Between eighty and one hundred of these organizations have already in their national conventions this year adjourned to meet at the exposition in 1907.

YACHTS, BOATS, AND YACHT RACES—CUPS TENDERED BY THE KING OF ENGLAND, THE EMPEROR OF GERMANY, THE PRESIDENT OF THE UNITED STATES, AND SIR THOMAS LIPTON.

In the sporting world of Europe and America preparations are being made for the assembling in Hampton Roads of a great gathering of yachts and motor boats. I am informed that cups have been tendered for the yacht races by the King of England, the Emperor of Germany, the President of the United States, and by Sir Thomas Lipton.

AERONAUTICAL EXHIBITION BY THE JAMESTOWN CONGRESS OF AERONAUTS.

Exhibitions and competitions under the auspices of the Jamestown Congress of Aeronauts, of which Dr. Alexander Graham Bell, of Washington, is the president. The most prominent men in Europe and America are interested in the development of this organization and will be in attendance on this congress.

ATHLETIC GAMES.

The athletic associations of the country are also arranging a series of functions and great athletic games at the exposition, under the auspices of their national organizations.

INDUSTRIAL AND COMMERCIAL AND MUNICIPAL EXHIBITS.

Along industrial and commercial lines not only are a large number of the leading manufacturers of the country either erecting buildings of their own upon the exposition grounds or are arranging for space in the exposition buildings, already so much space having been provided for exhibits as was provided at the Buffalo Pan-American Exposition, but many of the prominent cities of the East, in their corporate capacity, are endeavoring to secure space for the collective exhibition of the manufactures of their several cities.

Among these are the cities of Philadelphia, Baltimore, Washington, Boston, Hartford, Milwaukee, Richmond, Roanoke, and Lynchburg.

In the State of Ohio a popular movement has been organized and funds are being subscribed for the erection of a building which will cost over \$100,000, in which will be exhibited alone the manufactured products of that State.

MILITARY ORGANIZATIONS.

Owing to the advices which the exposition company has received from various States indicating their intention to send their military organizations to participate in this tercentennial celebration, it has been ascertained that the land originally set apart for military purposes is insufficient, and it has been necessary to acquire additional territory.

ENLARGEMENT OF PLAN AND OF ACCOMMODATIONS NECESSARY.

The widespread interest which has been manifested in the United States, and which appears to be increasing as the celebration approaches, has made it necessary for those who are charged with the responsibility of the celebration to enlarge upon their original plans in order to afford the necessary accommodation to those who are applying for it and to creditably represent the nation in the celebration of her tercentennial anniversary.

This widespread interest also indicates the great concourse of people who are likely to assemble on the shores of Hampton Roads next year, assuring to the exposition a revenue beyond their original expectations. This concourse seems the more probable when it is realized that half the population of the United States is within twenty-four hours' ride of the city of Norfolk, and the transportation is afforded by a number of trunk-line railroads and coastwise steamship lines.

GREAT ATTENDANCE INDICATED AND TEMPORARY LOAN SECURED BY RECEIPTS AND INCOME.

To meet the demands upon them it has been found necessary by the exposition company to ask Congress at this time to make a loan of \$1,000,000, to be expended in the completion of the exposition, pledging for the return of the loan a portion of the gate receipts and income from concessions on the exposition grounds in the same manner as the Louisiana Purchase Exposition did in connection with the loan of \$4,600,000 made to it by this Government.

The great attendance which is now indicated at this exposition it is believed will indicate an income of something like \$4,000,000 from gate receipts and concessions. The exposition company is therefore believed to be safe in assuming the obligation of returning to this Government the \$1,000,000 asked for, and is willing that the Government provide the same safeguards for the repayment of this money as were provided at St. Louis.

EXECUTIVE SESSION.

Mr. BURKETT. Mr. President—

The VICE-PRESIDENT. Does the Senator from Massachusetts yield to the Senator from Nebraska?

Mr. LODGE. For what purpose?

Mr. BURKETT. I want to ask to have a bill passed.

Mr. LODGE. I think it is rather late to take up the Calendar. I renew my motion for an executive session.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After twelve minutes spent in executive session the doors were reopened.

PRINTING OF ILLUSTRATIONS.

While the doors were closed the following order was made:

Ordered, That the illustrations accompanying the communication from the Secretary of the Interior, transmitting a report from the commissioner of the Interior for Porto Rico for the fiscal year ended June 30, 1906; the communication from the Secretary of the Interior, transmitting, pursuant to law, the report of the commissioner of education for Porto Rico for the fiscal year ended June 30, 1906, and the memorial of N. E. Dawson, of Chicago, Ill., on the question of a reform in spelling, setting forth a plan for imparting aptitude in spelling by means of a simplified key to pronunciation applicable to all languages, and suggesting measures for extending a knowledge of it over the nation, presented yesterday, be printed with the documents.

Mr. KEAN. I move that the Senate adjourn.

The motion was agreed to; and (at 4 o'clock and 20 minutes p. m.) the Senate adjourned, the adjournment being until Monday, December 10, 1906, at 12 o'clock meridian.

CONFIRMATIONS.

Executive nominations confirmed by the Senate December 6, 1906.

ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY.

Herbert G. Squiers, of New York, former envoy extraordinary and minister plenipotentiary to Cuba, to be envoy extraordinary and minister plenipotentiary of the United States to Panama.

CONSULS.

Albert W. Brickwood, jr., of Arizona, lately vice and deputy consul at Nogales, to be consul of class 8 at Puerto Cortes, Honduras.

George A. Bucklin, jr., of Oklahoma, to be consul of the United States of class 9 at Glauchau, Saxony.

James G. Carter, of Georgia, lately consul of class 9 at Sivas, to be consul of the United States of class 8 at Tamatave, Madagascar.

Julius D. Dreher, of South Carolina, to be consul of the United States of class 9 at Tahiti, Society Islands.

Ernest L. Harris, of Illinois, lately consul of class 6 at Chemnitz, to be consul of the United States of class 6 at Smyrna, Turkey.

Will L. Lowrie, of Illinois, to be consul of the United States of class 8 at Weimar, Germany.

Thomas H. Norton, of Ohio, lately consul of class 6 at Smyrna, to be consul of the United States of class 6 at Chemnitz, Saxony.

John H. Shirley, of Illinois, lately consul of class 9 at Sura, to be consul of the United States of class 9 at Charlottetown, Prince Edward Island.

SECRETARIES OF EMBASSY.

H. Percival Dodge, of Massachusetts, lately secretary of the embassy at Berlin, to be secretary of the embassy of the United States at Tokyo, Japan.

Spencer F. Eddy, of Illinois, lately secretary of the embassy at St. Petersburg, to be secretary of the embassy of the United States at Berlin, Germany.

George Post Wheeler, of Washington, to be second secretary of the embassy of the United States at Tokyo, Japan.

Basil Miles, of Pennsylvania, to be third secretary of the embassy of the United States at St. Petersburg, Russia.

Paxton Hibben, of Indiana, lately third secretary of the embassy at St. Petersburg, to be second secretary of the embassy at Mexico, Mexico.

SECRETARIES OF LEGATION.

Fred Morris Dearing, of Missouri, to be second secretary of the legation of the United States at Habana, Cuba.

William Helmke, of New York, lately second secretary of the embassy at Mexico, to be secretary of the legation of the United States at Bogota, Colombia.

Charles S. Wilson, of Maine, lately secretary of the legation to Greece and Montenegro and of the diplomatic agency in Bulgaria, to be secretary of the legation of the United States at Habana, Cuba.

M. Marshall Langhorne, of Virginia, former commercial agent at Dalny, to be secretary of the legation of the United States at Christiania, Norway.

COLLECTORS OF CUSTOMS.

Clark W. Carnahan, of Oregon, to be collector of customs for the district of Oregon, in the State of Oregon.

Dascar O. Newberry, of North Carolina, to be collector of customs for the district of Albemarle, in the State of North Carolina.

Jesse F. Warren, of Florida, to be collector of customs for the district of Apalachicola, in the State of Florida.

APPRAISER OF MERCHANDISE.

Winthrop T. Hodges, of Massachusetts, to be appraiser of merchandise in the district of Boston and Charlestown, in the State of Massachusetts.

APPOINTMENTS IN THE REVENUE-CUTTER SERVICE.

Stanley Vincent Parker, of Ohio, to be a third lieutenant in the Revenue-Cutter Service of the United States.

Joseph Tillotson Drake, of New York, to be third lieutenant in the Revenue-Cutter Service of the United States.

Lloyd Toulmin Chalker, of Connecticut, to be a third lieutenant in the Revenue-Cutter Service of the United States.

PROMOTIONS IN THE REVENUE-CUTTER SERVICE.

First Lieut. Daniel Jason Ainsworth to be a captain in the Revenue-Cutter Service of the United States, to rank as such from July 8, 1906.

First Lieut. James Henry Brown to be a captain in the Revenue-Cutter Service of the United States, to rank as such from July 10, 1906.

First Lieut. John Ernest Reinburg to be a captain in the Revenue-Cutter Service of the United States, to rank as such from September 15, 1906.

Second Lieut. Albert Henry Buhner to be a first lieutenant in the Revenue-Cutter Service of the United States, to rank as such from July 10, 1906.

Second Lieut. Charles William Cairnes to be a first lieutenant in the Revenue-Cutter Service of the United States, to rank as such from September 15, 1906.

Second Lieut. John Mel to be a first lieutenant in the Revenue-Cutter Service of the United States, to rank as such from July 8, 1906.

APPOINTMENTS IN PUBLIC HEALTH AND MARINE-HOSPITAL SERVICE.

Robert Alexander Herring, of Mississippi, to be an assistant surgeon in the Public Health and Marine-Hospital Service of the United States.

William W. Miller, of Tennessee, to be an assistant surgeon in the Public Health and Marine-Hospital Service of the United States.

French Simpson, of Texas, to be an assistant surgeon in the Public Health and Marine-Hospital Service of the United States.

Robert A. C. Wollenberg, of Michigan, to be an assistant surgeon in the Public Health and Marine-Hospital Service of the United States.

POSTMASTERS.

ARKANSAS.

Tillie J. Bruce to be postmaster at Piggott, in the county of Clay and State of Arkansas.

Joel A. Harper to be postmaster at Rector, in the county of Clay and State of Arkansas.

COLORADO.

George A. Herrington to be postmaster at Montrose, in the county of Montrose and State of Colorado.

Mabel E. Strout to be postmaster at Ouray, in the county of Ouray and State of Colorado.

IDAHO.

William S. Brainard to be postmaster at Wardner, in the county of Shoshone and State of Idaho.

ILLINOIS.

Welby B. Carleton to be postmaster at Hinsdale, in the county of Dupage and State of Illinois.

Henry B. Harvey to be postmaster at Cissna Park, in the county of Iroquois and State of Illinois.

Frank Woolley to be postmaster at Saybrook, in the county of McLean and State of Illinois.

INDIANA.

Daniel Conaway to be postmaster at Cayuga, in the county of Vermillion and State of Indiana.

KENTUCKY.

Dood Adair to be postmaster at Hawesville, in the county of Hancock and State of Kentucky.

MAINE.

Mary E. Clark to be postmaster at Bingham, in the county of Somerset and State of Maine.

Mary E. Frye to be postmaster at Fryeburg, in the county of Oxford and State of Maine.

Harry R. Hichborn to be postmaster at Stockton Springs, in the county of Waldo and State of Maine.

Theophilus H. Sproul to be postmaster at Winterport, in the county of Waldo and State of Maine.

MARYLAND.

Alfred H. Hambleton to be postmaster at St. Michaels, in the county of Talbot and State of Maryland.

MASSACHUSETTS.

Andrew N. Maxon to be postmaster at Blackstone, in the county of Worcester and State of Massachusetts.

Simeon L. Smith to be postmaster at Orleans, in the county of Barnstable and State of Massachusetts.

MICHIGAN.

Oscar P. Carver to be postmaster at Traverse City, in the county of Grand Traverse and State of Michigan.

MINNESOTA.

Joseph H. Feeter to be postmaster at Bird Island, in the county of Renville and State of Minnesota.

N. Ellertson to be postmaster at Mount Iron, in the county of St. Louis and State of Minnesota.

MISSOURI.

U. S. Grant Evans to be postmaster at Farmington, in the county of St. Francois and State of Missouri.

MONTANA.

Max Jacobs to be postmaster at East Helena, in the county of Lewis and Clark and State of Montana.

NEW MEXICO.

Albert L. Breeding to be postmaster at Texico, in the county of Roosevelt and Territory of New Mexico.

RHODE ISLAND.

F. Edgar Crumb to be postmaster at Riverside, in the county of Providence and State of Rhode Island.

VIRGINIA.

Verlin M. Scott to be postmaster at Saltville, in the county of Smyth and State of Virginia.

WEST VIRGINIA.

William H. Lautz to be postmaster at Pennsboro, in the county of Ritchie and State of West Virginia.

WISCONSIN.

John J. O'Connell to be postmaster at Marinette, in the county of Marinette and State of Wisconsin.

WYOMING.

Henry D. Ashley to be postmaster at Encampment, in the county of Carbon and State of Wyoming.

HOUSE OF REPRESENTATIVES.

THURSDAY, December 6, 1906.

The House met at 12 o'clock noon.

Prayer by the Chaplain, HENRY N. COUDEN, D. D.

The Journal of the proceedings of yesterday was read and approved.

COMMITTEE APPOINTMENTS.

The SPEAKER announced the following committee appointments:

Mr. GILHAMS, to the Committee on Revision of the Laws and to the Committee on Industrial Arts and Expositions.

Mr. COLE, to the Committee on Agriculture.

Mr. BANNON, to the Committee on the Judiciary.

CALL OF COMMITTEES.

The SPEAKER. The Clerk will call the next committee.

The Committee on the Merchant Marine and Fisheries was called.

COASTWISE PILOTAGE.

Mr. LITTLEFIELD. Mr. Speaker, by direction of the Committee on the Merchant Marine and Fisheries, I call up the bill (H. R. 5281) to remove discriminations against American sailing vessels in the coastwise trade.

The SPEAKER. The gentleman from Maine [Mr. LITTLEFIELD], on behalf of the Committee on the Merchant Marine and Fisheries, calls up the following bill, which the Clerk will report.

The Clerk read as follows:

Be it enacted, etc., That section 4442 of the Revised Statutes be, and is hereby, amended by adding thereto the following: "Whenever the master or mate of a sailing vessel of the United States employed in the coastwise trade claiming to be a skillful pilot offers himself for a license, the inspectors shall make diligent inquiry as to his character and merits, and if satisfied from personal examination of the applicant, with the proof that he offers, that he possesses the requisite knowledge and skill, and is trustworthy and faithful, they shall grant him a license for the term of five years to pilot any such vessel within the limits prescribed in the license; but such license shall be suspended or revoked upon satisfactory evidence of negligence, unskillfulness, inattention to the duties of his station, intemperance, or the willful violation of any of the provisions of this title."

SEC. 2. That section 4444 of the Revised Statutes be, and is hereby, amended to read as follows:

"SEC. 4444. No State or municipal government shall impose upon pilots of vessels any obligation to procure a State or other license in addition to that issued by the United States, or any other regulation which will impede such pilots in the performance of the duties required by this title; nor shall any pilot charges be levied by any such authority upon any vessel piloted as provided by this title, nor upon any vessel of the United States employed in the coastwise trade being towed into or out of any port of the United States by a vessel under command of a pilot licensed for such port under the laws of the United States, and in no case shall the fees charged for the pilotage of any vessel exceed the customary or legally established rates in the State where the same is performed. Nothing in this title shall be construed to annul or affect any regulations established by the laws of any State requiring vessels entering or leaving a port in any such State other than coastwise vessels to take a pilot duly licensed or authorized by the laws of such State or of a State situate upon the waters of such State."

SEC. 3. That section 4237 be, and is hereby, amended to read as follows:

"SEC. 4237. No regulations or provisions shall be adopted by any State which shall make any discrimination in the rate of pilotage or half pilotage between vessels sailing between the ports of one State and vessels sailing between the ports of different States, or any discrimination against vessels propelled in whole or in part by machinery or sail, or against national vessels of the United States; and all existing regulations or provisions making any such discrimination are annulled and abrogated."

SEC. 4. That this act shall take effect six months after its passage.

Mr. LITTLEFIELD. Mr. Speaker, I ask unanimous consent that we may be allowed two hours on a side for debate, the time on the other side to be controlled by the gentleman from Kentucky [Mr. SHERLEY] and the time on this side to be controlled by myself.

The SPEAKER. The gentleman from Maine asks unanimous consent that debate upon this bill to close in four hours, two hours to be controlled by himself and two hours by the gentleman from Kentucky [Mr. SHERLEY]. Is there objection?

There was no objection.

Mr. LITTLEFIELD. Mr. Speaker, I yield fifteen minutes to the gentleman from Washington [Mr. HUMPHREY].